

EXHIBIT 1
PART 1 OF 2

ORIGINAL

FILED

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

AUG 18 2006

ALAN SLATER, Clerk of the Court

BY: C. MASON, DEPUTY

MARILEE MARSHALL

State Bar No. 101046

JENNIFER PEABODY

State Bar No. 198746

MARILEE MARSHALL & ASSOCIATES, INC.

Attorneys at Law

523 W. Sixth Street

Suite F109

Los Angeles, CA 90014

(213) 489-7715

Attorneys for Petitioner

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

IN RE SIEU NGO

On Habeas Corpus.

Case No.

M-10984

Related Case No. C199109

PETITION FOR WRIT OF HABEAS
CORPUSPETITION FOR WRIT OF HABEAS
CORPUS

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
PETITION FOR WRIT OF HABEAS CORPUS	1
MEMORANDUM OF POINTS & AUTHORITIES	12
I STANDARD OF REVIEW	12
II THE PAROLE BOARD'S DECISION WAS NOT SUPPORTED BY ANY EVIDENCE AND RESULTED IN A DEPRIVATION OF PETITIONER'S FIFTH, SIXTH, EIGHTH AND FOURTEENTH AMENDMENT RIGHTS	13
A. <u>The Applicable Law</u>	13
B. <u>There is No Evidence to Support the Board's Decision that Petitioner Posed an Unreasonable Risk of Danger to Society if Released From Prison</u>	16
C. <u>Reliance Solely on the Facts and Characterization of Petitioner's Commitment Offense and Petitioner's Prior Record to Deny Parole Resulted in a Violation of the Eighth and Fourteenth Amendment Prohibition Against Cruel and Unusual Punishment.</u>	21
III CONCLUSION	23

TABLE OF AUTHORITIES

FEDERAL CASES

<i>Biggs v. Terhune</i> (9th Cir. 2003) 334 F.3d 910	15
<i>Board of Pardons v. Allen</i> (1987) 482 U.S. 369 [107 S.Ct. 2415, 96 L.Ed.2d 303]	14
<i>Board of Regents of State Colleges v. Roth</i> (1972) 408 U.S. 564 [92 S.Ct.2701, 33 L.Ed.2d 548]	14
<i>Greenholtz v. Inmates of Nebraska Penal</i> (1979) 442 U.S. 1 [99 S.Ct.2100, 60 L.Ed.2d 668]	14, 15
<i>Jancsek v. Oregon Board of Parole</i> (9th Cir. 1987) 833 F.2d 1389	16
<i>McQuillion v. Duncan</i> (9th Cir. 2002) 306 F.3d 895	15

STATE CASES

<i>In re Dannenberg</i> (2005) 34 Cal.4th 1061	12, 22, 23
<i>In re Capistran</i> (2003) 107 Cal.App.4th 1299	14
<i>In re DeLuna</i> (2005) 126 Cal.App.4th 585	12
<i>In re Rosenkrantz</i> (2002) 29 Cal.4th 616	passim
<i>In re Scott</i> (2004) 119 Cal.App.4th 871	12, 13
<i>People v. Croy</i> (1985) 41 Cal.3d 1	19
<i>People v. Durham</i> (1969) 70 Cal.2d 171	19
<i>People v. Kaufman</i> (1907) 152 Cal. 331	19
<i>People v. Mendoza</i> (1998) 18 Cal.4th 1114	20
<i>People v. Nguyen</i> (1993) 21 Cal.App.4th 518	19, 20
<i>People v. Prettyman</i> (1996) 14 Cal.4th 248	19, 20
<i>People v. Price</i> (1991) 1 Cal.4th 324	20
<i>People v. Woods</i> (1992) 8 Cal.App.4th 1570	20

FEDERAL STATUTES

U.S. Const., Amend. XIV, § 1	14
------------------------------------	----

STATE STATUTES

Cal. Const., Art. V, § 8.	14
Penal Code section 187	1
Penal Code section 1000	6, 21
Penal Code section 3041	13, 14, 15
Penal Code section 12022	1, 2

UNITED STATES CONSTITUTION

Fifth Amendment	passim
Eighth Amendment	passim
Fourteenth Amendment	passim

1 **MARILEE MARSHALL**
State Bar No. 101046
2 **JENNIFER PEABODY**
State Bar No. 198746
3 **MARILEE MARSHALL & ASSOCIATES, INC.**
Attorneys at Law
4 523 W. Sixth Street
Suite 1109
5 Los Angeles, CA 90014
6 (213) 489-7715
7 Attorneys for Petitioner
8

9 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF ORANGE**

11 **IN RE SIEU NGO,**

12 **On Habeas Corpus.**

Case No. _____

Related Case No. C199109

13 **PETITION FOR WRIT OF HABEAS**
14 **CORPUS**

15
16 **PETITION FOR WRIT OF HABEAS CORPUS**

17 **TO THE PRESIDING JUDGE OF ORANGE COUNTY SUPERIOR COURT:**

18 Petitioner, SIEU NGO, by and through his attorneys, MARILEE MARSHALL and
19 JENNIFER PEABODY, petitions for a writ of habeas corpus and by this verified petition
20 alleges as follows:

21 **I**

22 Petitioner is in the custody of the California Department of Corrections at the
23 Correctional Training Facility in Soledad, California serving a term of 16 years to life
24 following his conviction in 1994 in Orange County Superior Court Case No. C199109
25 wherein petitioner was convicted of second degree murder in violation of Penal Code
26 section 187 and it was found that petitioner was vicariously armed with a firearm within
27 the meaning of Penal Code section 12022. Petitioner was received by the Department of
28 Corrections on February 1, 1994, when his life term commenced. Petitioner's minimum

**PETITION FOR WRIT OF HABEAS
CORPUS**

1 Corrections on February 1, 1994, when his life term commenced. Petitioner's minimum
2 parole eligibility date was May 24, 2003. On February 3, 2006, petitioner appeared
3 before the Board for his second subsequent parole consideration hearing (third actual
4 hearing). Petitioner was denied parole for a period of two years. (Exhibit A: Parole
5 Consideration Hearing.) At this point, petitioner has served a total of twelve actual years
6 in state prison. If given post conviction credit as afforded in Title 15, section 2410,
7 subdivision (b) of the California Code of Regulations, petitioner's term to date is more
8 than 16 years. (CCR, Tit. 15, § 2403, subd. (c).) Petitioner alleges that the continued
9 denial of parole violates his Fifth and Fourteenth Amendment right to due process of law.
10 There is no evidence to support a finding that petitioner currently poses an unreasonable
11 risk to society if released from prison. Accordingly, his continued confinement violates
12 the due process clauses of the Fifth and Fourteenth Amendments and constitutes cruel
13 and unusual punishment in violation of the Eighth and Fourteenth Amendments.

14 II

15 Anthony Kane is the acting warden of the Correctional Training Facility in
16 Soledad, California and thus, is the legal custodian of petitioner.

17 III

18 Dennis Kenneally is the Executive Director of the Board of Parole Hearings
19 (formerly the Board of Prison Terms), the agency which determines whether prisoners
20 serving life sentences are suitable for release on parole.

21 IV

22 Petitioner was charged with the murder of Angel Gonzales. It was further alleged
23 that petitioner was vicariously armed with a firearm within the meaning of Penal Code
24 section 12022. On October 21, 1993, petitioner was convicted of second degree murder
25 and it was found that petitioner was vicariously armed with a firearm. Petitioner was
26 sentenced to 15 years to life plus one year for the armed allegation. Petitioner's life term
27 commenced on February 1, 1994. Petitioner's minimum parole eligibility date was May
28 24, 2003.

PETITION FOR WRIT OF HABEAS
CORPUS

V

The facts of the underlying offense are set forth in the trial court file (Case No. C199109) and were summarized by the Parole Board as follows:

On September 18, 1992, Angel Gonzales was beaten and shot to death near Fullerton High School as he was walking home after school. An investigation revealed that earlier in the day, the victim, a member of the "Fullerton's Toker's Town," a Latin gang and member of "Fullerton's Boyz" B-O-Y-Z, an Asian gang were at McDonald's restaurant near the high school. The victim and No, that's N-O Muhamed M-U-H-A-M-E-D, had a confrontation with each claiming their respective gang affiliations. After this non physical altercation, the group of Asians which at the time included Sieu Phong Ngo obtained a firearm. Ngo, N-G-O, and the Asian gang members returned to the school where they waited for Gonzales. As he walked home, he was attacked and beaten. During the physical altercation the victim was shot one time in the back by Usumang U-S-U-M-A-N-G last M-U-H-A-M-E-D, the group of five Asian gang members including Ngo left the area after the shooting. Angel Gonzales died at the scene as a result of the gun shot wound. Ngo, Jimmy Dao, D-A-O and Asat Cham, A-S-A-T-C-H-A-M fled to the state of Washington. They were subsequently apprehended there and the murder weapon, a stolen 22 caliber handgun was recovered in the vehicle. (Exhibit A, pgs. 5-6 of the Hearing.)

VI

On May 13, 2002, the Board of Prison Terms (which is now referred to as the Board of Parole Hearings) conducted petitioner's Initial Parole Consideration Hearing. The Board found petitioner unsuitable and denied parole for a period of two years. (Exhibit B: Initial Parole Consideration Hearing 5/13/2002.) In support of its finding that petitioner currently posed an unreasonable risk to society, the Board found that the "offense was carried out in a manner which demonstrates an exceptionally callous disregard for human suffering and life" and the "motive for the crime was inexplicable or very trivial in relation to the offense." (Exhibit B, p. 57.) The Board further found that petitioner had an escalating pattern of criminal conduct. (Exhibit B, p. 58.) Petitioner was, however, commended for remaining disciplinary free, obtaining a positive psychological evaluation, participating in NA, completing two vocations and securing positive parole plans. (Exhibit B, pgs. 58-59.) The Board recommended that petitioner remain disciplinary free, upgrade educationally and vocationally, and participate in self-help and therapy. (Exhibit B, p. 61.)

PETITION FOR WRIT OF HABEAS
CORPUS

1 On August 3, 2004, the Board conducted petitioner's initial subsequent parole
2 consideration hearing (second actual hearing). The Board found petitioner unsuitable for
3 parole and denied parole for a period of one year. In finding petitioner unsuitable for
4 parole, the Board found that the offense was "carried out in an especially cruel and
5 callous manner." (Exhibit C: Parole Consideration Hearing 8/3/04, p. 58.) Specifically,
6 the Board concluded that the "offense was carried out in a dispassionate" and "calculated
7 manner." (Exhibit C.) The Board further found that the offense was "carried out in a
8 manner that demonstrates an exceptionally callous disregard for another human being,"
9 and the motive for the crime was "trivial." (Exhibit C, p. 58.) The Board commended
10 petitioner for his parole plans, lack of disciplinary problems, participation in self-help and
11 educational activities and noted that petitioner was making progress from a
12 "psychological perspective." (Exhibit C, p. 60-61.) The Board recommended that
13 petitioner continue self-help and therapy "to continue to make progress" "to the extent
14 that he will be able to face, understand, and cope with stressful situations in a
15 nondestructive manner." (Exhibit C, p. 61.) The Board further recommended that
16 petitioner: (1) remain disciplinary free, (2) continue to explore his culpability in the
17 crime, (3) participate in self-help and therapy, and (4) participate in other positive types
18 of programs. (Exhibit C, p. 62.)

19 VII

20 On February 8, 2006, petitioner, after successfully completing the
21 recommendations of the prior Boards, appeared for his second subsequent parole
22 consideration hearing (third actual hearing). (Exhibit A.) Despite petitioner's complete
23 compliance with the requests and suggestions of the Board, the Board again found
24 petitioner unsuitable for parole. The Board also found that it would not be "reasonable to
25 expect that parole would be granted at a hearing during the following two years."
26 (Exhibit A, p. 63.) The Board found that petitioner would pose an unreasonable risk of
27 danger to society or a threat to public safety if released from prison. (Exhibit A.) In
28 support of its finding, the Board concluded that "the offense was carried out in a

PETITION FOR WRIT OF HABEAS
CORPUS

1 dispassionate and calculated manner in that it was a confrontation between gang members
2 preplanned by lying in wait for the victim as he walked home." The Board continued,
3 "The offense was carried out in a manner demonstrating exceptionally callous disregard
4 for human suffering, disregard for public safety in that it occurred near a school and there
5 was a clear opportunity for you to cease but you continued." (Exhibit A, p. 61.) The
6 Board commended petitioner for having "a relatively criminal free background" and "a
7 history of stable relationships, including your family support." The Board added:

8 As to your institutional behavior you have programmed commendably, your
9 education includes 41 units towards you [sic] AA Degree and continuing
10 involvement with college enrollment including your current independent
11 study through Coast Line Community College. We also have read into the
12 record a very reputable list of vocational achievements including
13 automotive refinishing and upholstery, forklift operator, salesmanship and
14 other vocational work. You have participated in self-help and therapy, well
15 self-help consistently ranging from Anger Management, the Teddy Bear
16 Drive, Feed the Children, Buddhist ordination into Buddhist studies, the
17 Impact Program, Key to Fatherhood, The Muslim Chapel, and you have
18 assisted in inmate education. As to misconduct, you have zero 115's, you
19 have two minor 128A's, the last in 2000 for window covering. As to your
20 psychological report, the report that is dated January 23, 2002, the last we
21 have by Doctor Saindon does in general support release. And I quote, this
22 man has spent ten years in prison and that is at the time of this
23 psychological report, I would recommend should he be paroled abstinence
24 from all alcohol or use of any controlled substance, he should be relocated
25 so that he is near his family, she should make frequent reports to his parole
26 officer concerning his vocational progress and goals. And due to his
27 family's commitment to supporting him upon his release, his projected level
28 of success in the community if granted a date for parole is seen at this time
to be better than average. You also have made outstanding parole plans.
You have viable residential plans in the last county of legal residence and I
refer to the record for the documentation we have received. You also have
acceptable employment plans with established businesses owned by your
relatives who are assuring you of jobs. (Exhibit A, pgs. 62-63.)

21 Despite all of the evidence supporting a granting of parole, the Board found petitioner
22 unsuitable for a grant of parole based solely on the commitment offense, including the
23 nature of the offense and the trivial motive for the offense. (Exhibit A, pgs. 60-65.) The
24 Board expressed some concern about petitioner's rendition of the claim and his denial
25 that he knew anyone was armed with a firearm and found that petitioner's version
26 "minimized" his role and showed "lack of insight" into the "causative factors" of the
27 crime. (Exhibit A, p. 65.) The Board again recommended that petitioner: (1) "get self-

1 help,” (2) stay disciplinary free, (3) get therapy and (4) continue his educational and
2 vocational development. (Exhibit A, pgs. 64-65.)

3 VIII

4 Petitioner alleges that there was no evidence to support the Board’s finding that he
5 poses a *current unreasonable* risk if released. In fact, all current, reliable evidence
6 presented to the Board shows that petitioner poses no risk if released. Petitioner further
7 alleges that the Parole Board violated petitioner’s statutory rights and his Fifth and
8 Fourteenth Amendment due process rights when it refused to grant petitioner a parole
9 date despite any evidence supporting a finding that petitioner posed an unreasonable risk
10 of harm. Furthermore, his continued confinement constitutes cruel and unusual
11 punishment in violation of the Eighth and Fourteenth Amendments of the United States
12 Constitution. Petitioner was only 19 years old at the time of the commitment offense and
13 had only one prior contact with law enforcement wherein he was found in possession of
14 rock cocaine and was diverted pursuant to Penal Code section 1000. Petitioner has spent
15 more than twelve years in state prison and is currently 33 years old. While incarcerated,
16 he has suffered no 115’s, has engaged in no acts of violence and has shown no propensity
17 toward future criminality. Petitioner’s offense was the direct result of immaturity and his
18 involvement with a group of wanna-be gangsters. As the psychologist who evaluated
19 petitioner noted, petitioner has gained insight into “the negative aspects of gang
20 involvement” and has remorse for this actions. Petitioner’s role in the offense was
21 minimal and he was not the direct perpetrator of the murder, although culpable as an
22 aider and abettor under the natural and probable consequences theory. Petitioner had no
23 prior history of violence. Contrary to the Board’s finding, nothing about petitioner or his
24 offense supports a finding that he poses a *current unreasonable risk* to society if released
25 from prison.

IX

Petitioner further alleges that the Board's finding that the offense was cruel, callous and carried out in a dispassionate manner, ignores the fact that all second degree murders are, by definition, cruel, callous and dispassionate. Since a second degree murder conviction by definition is the unlawful killing of a human being with malice aforethought, it is necessarily cruel and dispassionate. Taking the life of another for an insignificant reason is by definition cruel, callous and dispassionate. Because every second degree murder is cruel, callous and dispassionate, such a finding by the Board is insufficient to overcome the statutory command that parole must normally be given.

Petitioner submits that, contrary to the Board's finding, nothing about his commitment offense is more than minimally necessary to convict him of the life offense for which he is confined, namely, second degree murder. Petitioner was tried and convicted as an aider and abettor. (Exhibit D: Letter from Counsel Donald C. Rubright.) Although there was evidence that petitioner knew one of his friends had a gun in the vehicle, there was no evidence that there was a plan for the accomplice to use the gun. In fact, there was no evidence that petitioner aided and abetted the shooter in any manner. (Exhibit D.) Rather, the record demonstrates that petitioner was convicted under the natural and probable consequences doctrine in that he aided and abetted the fight which led to one member of his group impulsively deciding to retrieve the gun and shoot the victim. (Exhibit D.) There was nothing about petitioner's offense to indicate that it was particularly cruel or egregious. Rather, it was a typical second degree murder. Furthermore, petitioner's involvement was minimal in nature. Although still liable for the murder under an aiding and abetting and derivative liability theory, petitioner was not the direct perpetrator of the shooting. Even if petitioner's conduct is greater than that minimally required for a second degree murder, it is insufficient to support a finding that petitioner *currently poses* an unreasonable risk to society if released from prison. The Board erred in finding that the circumstances of the offense were sufficient to support a finding that petitioner poses an "unreasonable risk to society" if released from prison.

PETITION FOR WRIT OF HABEAS
CORPUS

1 There is nothing about petitioner's commitment offense which supports an inference that
2 as a result of his offense, he *currently poses an unreasonable risk to society* if released.

3 X

4 Petitioner further alleges that the Board's finding that petitioner "hasn't developed
5 the insight that he needs into the causative factors of this crime," is without support. All
6 of the current evidence before the Board affirmatively demonstrates that petitioner
7 accepts full responsibility for his actions and understands the causative factors which led
8 to his participation in the life offense. Petitioner understands how his participation in the
9 underlying felony facilitated his co-defendant's commission of the murder and how his
10 life choices led to his involvement in the offense. The Board's decision to the contrary is
11 without merit.

12 None of the psychological staff indicated or recommended that petitioner needed
13 or required additional self-help or therapy *prior* to being released from prison in order to
14 gain insight into the causative factors which led to his involvement in the life offense.
15 Rather, the available evidence shows that petitioner has "insight into the negative aspects
16 of gang involvement" and has "remorse for his actions." (Exhibit E: BPT Mental Health
17 Evaluation, p. 5.) Dr. C. Saindon, Ph.D., who drafted the mental health evaluation
18 opined that petitioner "is competent and responsible for his behavior" and "does not have
19 a mental health disorder which would necessitate treatment either during his incarceration
20 period or following parole." (Exhibit E.) Saindon found that petitioner "was open in his
21 conversation and emphasized throughout the interview his recognition that gang
22 affiliation had only resulted in injury to himself and to those around him." (Exhibit E, p.
23 4.) Saindon further found that petitioner "showed significant insight into his commitment
24 offense . . ." (Exhibit E, p. 4.) There was no evidence to support the Board's finding that
25 petitioner lacks insight into the commitment offense or requires additional self-help or
26 therapy to understand the causative factors which led to the commitment offense.
27 Petitioner's version of the offense is consistent with the evidence before the Board.
28 Petitioner was convicted of second degree murder under an aider and abettor theory and

PETITION FOR WRIT OF HABEAS
CORPUS

1 the natural and probable consequences doctrine. Petitioner has always accepted
2 responsibility for his role in the offense and appreciates how his involvement in the
3 underlying offense facilitated his co-defendant's actions wherein he retrieved a gun and
4 shot the victim who was engaged in a fight with petitioner and others. The Board's
5 conclusion that petitioner requires additional therapy to understand the causative factors
6 of his life offense is with wholly without support.

7 XI

8 Petitioner did not file an administrative appeal because on April 15, 2004, Title 15
9 of the California Code of Regulations sections 2050 and 2051 were repealed and the
10 administrative appeals process was abolished.

11 XII

12 Petitioner has no other plain or speedy remedy to address the issues set forth in the
13 instant petition.

14 XIII

15 No other applications or motions have been filed in regard to the matters
16 complained of herein. This petition is addressed to this Court's original habeas corpus
17 jurisdiction.

18 XV

19 WHEREFORE, petitioner prays that this Court:

- 20 A. Issue its writ of habeas corpus or Order To Show Cause;
21 B. Conduct an evidentiary hearing wherein petitioner can obtain additional
22 evidence in support of his petition for writ of habeas;
23 C. After a full hearing on the matter, grant petitioner's petition for writ of
24 habeas corpus and issue an order directing the Board of Parole Hearings to
25 hold a new parole suitability hearing consistent with the standards set forth
26 in *In re Rosenkrantz* (2002) 29 Cal.4th 616, 625-626, 656-657 and *In re*
27 *Dannenberg* (2005) 34 Cal.4th 1061; and
28

PETITION FOR WRIT OF HABEAS
CORPUS


D. Grant such other relief as this Court deems necessary and proper.

Dated: August 15, 2006

Respectfully submitted,

MARILEE MARSHALL & ASSOCIATES, INC.


MARILEE MARSHALL


JENNIFER PEABODY
Attorneys for Petitioner Sieu Ngo

PETITION FOR WRIT OF HABEAS
CORPUS

VERIFICATION

I the undersigned say:

I am the attorney for petitioner in this action; petitioner is in custody and restrained of his liberty at this time in a county other than that in which I maintain my office. For these reasons, I am making this verification on petitioner's behalf. I have read the foregoing petition and know the contents thereof, which are based upon the records of the Superior Court of Orange County, the records of the Department of Corrections, and the exhibits attached hereto.

The above document is true of my own knowledge, except as to matters that are stated on my information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing facts and allegations in the petition are true and correct.

Executed at Los Angeles, California, this 15th day of August, 2006.


MARILEE MARSHALL

PETITION FOR WRIT OF HABEAS
CORPUS

1 **MEMORANDUM OF POINTS & AUTHORITIES**

2 I

3 **STANDARD OF REVIEW**

4 Courts review the parole decisions of the Board of Prison Terms for an abuse of
 5 discretion. (*In re Rosenkrantz* (2002) 29 Cal.4th 616, 625-626, 656-657.) The Board
 6 abuses its discretion if it makes factual findings that are not supported by the record. (*Id.*
 7 at 658; *In re Dannenberg, supra*, 34 Cal.4th at 1084.) If one or more of the factors lacks
 8 evidentiary support, the next questions are whether the Board would have denied parole
 9 based upon the supported factors and whether this result “satisfies the requirements of
 10 due process of law” because the factors for which there is some evidence “constitutes a
 11 sufficient basis supporting the ... discretionary decision to deny parole.” (*In re DeLuna*
 12 (2005) 126 Cal.App.4th 585, 598, citing, *In re Rosenkrantz, supra*, 29 Cal.4th at 677.)
 13 Courts uphold the denial of parole when it appears that the Board would have reached the
 14 same conclusion based on the supported factors and those factors individually or
 15 collectively justify that conclusion. (*Id.* at 682-683; *In re Dannenberg, supra*, 34 Cal.4th
 16 at 1071.) On the other hand, the “‘decision cannot stand’ when findings on important
 17 factors lack evidentiary support and it is not clear that the Board would have reached the
 18 same conclusion based on the supported factors.” (*In re DeLuna, supra*, 126 Cal.App.4th
 19 at 598.) In other words, “If the board’s consideration of the specified factors is not
 20 supported by some evidence in the record and thus is devoid of a factual basis, the court
 21 should grant the prisoner’s petition for writ of habeas corpus and should order the Board
 22 to vacate its decision denying parole and thereafter to proceed in accordance with due
 23 process of law.” (*In re Scott* (2004) 119 Cal.App.4th 871.) “When the supported factors
 24 could justify denying parole, but it is not clear that the Board would have reached this
 25 conclusion,” “the appropriate remedy is to direct the Board to reconsider the prisoner’s
 26 parole suitability in accordance with the discretion allowed by law.” (*Id.*)

27
 28
 PETITION FOR WRIT OF HABEAS
 CORPUS

II

**THE PAROLE BOARD'S DECISION WAS NOT SUPPORTED BY
ANY EVIDENCE AND RESULTED IN A DEPRIVATION OF PETITIONER'S
FIFTH, SIXTH, EIGHTH AND FOURTEENTH AMENDMENT RIGHTS**

A. The Applicable Law

Under California law, a life prisoner *must be* paroled when his or her release would not pose a danger to the public. (Pen. Code § 3041, subd. (b).) Penal Code section 3041 confers upon the Board of Prison Terms its authority and its duty to determine eligibility for parole. That section provides that “[o]ne year prior to the inmates minimum eligible parole release date a panel consisting of at least two commissioners of the Board of Prison Terms . . . shall normally set a parole release date. . .” (Pen. Code § 3041, subd. (a).) This requirement that normally a parole release date shall be set is made subject to explicit statutory criteria in subdivision (b) of section 3041. Subdivision (b) provides,

The panel or board *shall* set a release date unless it determines that the gravity of the current convicted offense or offenses, or the timing and gravity of current or past convicted offense or offenses, is such that consideration of the public safety requires a more lengthy period of incarceration for this individual, and that a parole date, therefore, cannot be fixed at this meeting.

Matters to be considered by the Board of Prison Terms in making a parole suitability include: The circumstances of the prisoner’s social history; past and present mental state; past criminal history, including involvement in other criminal misconduct which is reliably documented; the base and other commitment offenses, including behavior before, during and after the crime; past and present attitude toward the crime; any conditions of treatment or control, including the use of special circumstances under which the prisoner may safely be released to the community, and any other information which bears on the prisoner’s suitability for release. (Cal. Code Regs., tit. 15, §2402, subd. (b).) Subdivision (c) of Title 15 section 2402 sets forth six nonexclusive circumstances tending to show unsuitability, “the relevant importance of which is left to the judgment of the Board.” (*In re Scott, supra*, 119 Cal.App.4th 871.) The factors showing unsuitability

1 include (1) the commitment offense, (2) a previous record of violence, (3) unstable social
 2 history, (4) sadistic sexual offenses, (5) psychological factors, and (6) institutional
 3 behavior. (Cal. Code Regs. tit. 15 § 2402, subd. (c).) Subdivision (d), on the other hand,
 4 identifies nine circumstances tending to show suitability for release. The circumstances
 5 showing suitability include: (1) no juvenile record, (2) stable social history, (3) signs of
 6 remorse, (4) motivation for the crime, (5) battered woman's syndrome, (6) lack of
 7 criminal history, (7) age, (8) understanding and plans for the future, and (9) institutional
 8 behavior. (Cal. Code Regs. tit. 15 § 2402, subd. (d).) Neither the Board nor the
 9 Governor may deny parole to petitioner unless he currently poses "an unreasonable risk
 10 of danger to society if released from prison." (Cal. Code Regs. (hereinafter "CCR"), tit.
 11 15, § 2402, subd. (a); See also, Cal. Const., Art. V, § 8, subd. (b).) Due process requires
 12 the Board's decision "reflect an individualized consideration of the specialized criteria."
 13 (*In re Rosenkrantz, supra*, 29 Cal.4th at 677.) The Parole Board's decision to deny
 14 parole will not be disturbed if supported by "some evidence" and based upon the factors
 15 set forth in Penal Code section 3041, subdivision (b). (*In re Rosenkrantz, supra*, 29
 16 Cal.4th at 676-677; *In re Capistran* (2003) 107 Cal.App.4th 1299.) In the instant case,
 17 there was no evidence to support the Board's decision.

18 The Fourteenth Amendment provides that no state shall deprive any person of life,
 19 liberty or property without due process of law. (U.S. Const., Amend. XIV, § 1.) Federal
 20 courts examine questions of procedural due process in two steps. First, the court
 21 ascertains whether there is a liberty or property interest that was interfered with by the
 22 state. Second, if there is such an interest, the courts must determine if the procedures
 23 attendant upon a deprivation of that interest were constitutionally sufficient. (*Board of*
 24 *Regents of State Colleges v. Roth* (1972) 408 U.S. 564, 571 [92 S.Ct. 2701, 33 L.Ed.2d
 25 548].)

26 The Supreme Court in *Greenholtz v. Inmates of Nebraska Penal* (1979) 442 U.S.
 27 1, 7, 11-12 [99 S.Ct. 2100, 60 L.Ed.2d 668] and *Board of Pardons v. Allen* (1987) 482
 28 U.S. 369, 373 [107 S.Ct. 2415, 96 L.Ed.2d 303] established that:

PETITION FOR WRIT OF HABEAS
 CORPUS

1 while there is no constitutional or inherent right of a convicted person to be
2 conditionally released before the expiration of a valid sentence, a state's
3 statutory scheme, if it uses mandatory language, creates a presumption that
parole release will be granted when or unless certain designated findings
are made, and thereby give rise to a constitutional liberty interest.

4 The Ninth Circuit Court of Appeals in *McQuillion v. Duncan* (9th Cir. 2002) 306 F.3d 895
5 and *Biggs v. Terhune* (9th Cir. 2003) 334 F.3d 910 examined the parole scheme in
6 California, namely, Penal Code section 3041, and concluded that language is mandatory
7 and thus, "creates a presumption that parole release will be granted" unless the
8 statutorially defined determinations are made. These courts found that the California
9 parole scheme uses mandatory language and is largely parallel to the schemes found in
10 *Greenholtz and Allen*. (*McQuillion v. Duncan, supra*, 306 F.3d at 901, *Biggs v. Terhune,*
11 *supra*, 334 F.3d at 914.) Accordingly, the Courts found that "it is clear that 'California's
12 parole scheme gives rise to a cognizable liberty interest in release on parole.'" (*McQuillion v. Duncan, supra*, 306 F.3d at 902, *Biggs v. Terhune, supra*, 334 F.3d at
13 914.) "The liberty interest is created, not upon the grant of a parole date, but upon the
14 incarceration of the inmate." (*Id.* at 915.)

15
16 Because the California parole scheme vests in every inmate, a constitutionally
17 protected liberty interest, the court must look to the second step in the procedural due
18 process analysis to see if adequate procedural protections were afforded. (See, *Biggs v.*
19 *Terhune, supra*, 334 F.3d at 915.) "In the parole context, the requirements of due process
20 are satisfied if "some evidence" supports the decision." (*McQuillion v. Duncan, supra*,
21 306 F.3d at 304.) "Additionally, the evidence underlying the board's decision must have
22 some *indicia of reliability*." (*Biggs v. Terhune, supra*, 334 F.3d at 915 [emphasis
23 added].) "To ensure that a state-created parole scheme serves the public interest purposes
24 of rehabilitation and deterrence, the Parole Board must be cognizant not only of the
25 factors required by state statute to be considered, but also the concepts embodied in the
26 Constitution requiring due process of law." (*Id.* citing *Greenholtz v. Inmates, supra*, 442
27 U.S. at 7-8.) In California, in order to comply with the due process requirements of the
28 state and federal constitution, the decision to deny parole must be based on (1) some

PETITION FOR WRIT OF HABEAS
CORPUS

evidence; (2) of the existence of the factors specified by the statutory framework; (3) that is relevant and reliable and (4) that suggests an inmate poses a *current unreasonable* threat to public safety. (Title 15 CCR § 2402, subds. (a)(b); See, *Jancsek v. Oregon Bd. of Parole* (9th Cir. 1987) 833 F.2d 1389, 1390.) In the instant case, there was no reliable evidence before the Parole Board indicating that petitioner poses a *current unreasonable risk* to society if released from custody. Accordingly, the Board's failure to grant petitioner a parole release date violated petitioner's Fifth and Fourteenth Amendment due process rights.

B. There is No Evidence to Support the Board's Decision that Petitioner Posed an Unreasonable Risk of Danger to Society if Released From Prison

At petitioner's second subsequent hearing, the Board again determined that petitioner would pose a current unreasonable risk to society if released from prison. (Exhibit A.) In making this determination, the Board found that (1) the offense was carried out in a manner demonstrating a callous disregard for human suffering and a disregard for public safety, (2) the motive for the offense was "very trivial" and (3) petitioner's statement, "I thought I was going to a fist fight," "minimizes the gravity of the crime" and minimizes petitioner's involvement in the offense. (Exhibit A, pgs. 61-64.) The Board however, commended petitioner for having "a relatively criminal free background," "a history of stable relationships, including your family support," programming "commendably," upgrading educationally, "a very reputable list of vocational achievements," consistent "participation in self-help," total lack of disciplinary violations and "outstanding parole plans." (Exhibit A, pgs. 62-63.) Despite all of petitioner's accomplishments and achievements, the Board inexplicably found that the positive factors showing suitability do not outweigh the factors showing unsuitability. The Board then recommended that petitioner: (1) "get self-help," (2) "stay disciplinary free," (3) "get therapy," and (4) continue his educational and vocational development." (Exhibit A, pgs. 64-65.) The Board's decision was unsupported by any evidence in the record. Rather, all competent evidence, including petitioner's Board Reports and

1 Psychological Reports, overwhelmingly established that petitioner does not pose an
2 unreasonable risk to society if released from prison. According, habeas relief is
3 warranted.

4 The current evidence presented to the Board shows that petitioner does not pose an
5 unreasonable risk of danger to the public or a threat to the public safety. Petitioner's
6 Mental Health Evaluation report authored by C. Saindon, Ph.D. on January 23, 2002, was
7 supportive of release. Dr. Saindon concluded, "if released to the community,
8 [petitioner's] violence potential is estimated to be less than the average citizen in the
9 community, given his insight, his demonstrated ability to stay out of trouble, his
10 successful development of plans upon release, and the support of his family." (Exhibit E,
11 p. 5.)

12 Saindon's opinion is consistent with the findings of petitioner's correctional
13 counselors. All of petitioner's correctional counselors have been supportive of release on
14 parole. While his current Life Prisoner Evaluation Report does not contain a risk
15 assessment due to new rules by the Board, the report is nonetheless supportive of release.
16 In the section titled "Assessment," petitioner's counselor opined,

17 Inmate Ngo does not have any prior record of criminal conduct (considering
18 the recency and frequency of prior crimes) and the circumstances of the
19 instant offense, he does not appear to be criminally minded and has a good
20 insight into himself. He has been able to maintain himself relatively
21 disciplinary free (of serious rules violations) since 2/12/00 [sic]. In 9/12/97
22 and 2/27/97, he acquired two (2) Certificates of Completion, Vocational
23 Automotive Refinishing and Upholstery, respectively. In addition, he is in
the process of acquiring college credits via correspondence from Coastline
Community College with the hope that said credits will be transferable to a
university and eventually obtain a degree in Biology. Finally, he has
achieved realistic parole plans. (Exhibit F: Life Prisoner Evaluation August
2005, pgs. 2-3.)

24 In the Life Prisoner Evaluation Report prepared for the May 2004 hearing, petitioner's
25 correctional counselor concluded, "Considering the commitment offense, minimal prior
26 arrest record and good prison adjustment, the writer believes that Ngo would probably
27 pose a low degree of threat to the public at this time, if release[d] from prison." (Exhibit
28 G: Life Prisoner Evaluation May, 2004.) In reaching this decision, CCI Rubio relied on

PETITION FOR WRIT OF HABEAS
CORPUS

1 petitioner's immaturity at the time of the offense, being easily influenced by his peers and
2 his limited criminal history and lack of violence in custody. (Exhibit G, p. 3.) Rubio
3 further found the crime to be "episodic in nature." (Exhibit G, p. 3.) In April 2002,
4 petitioner's counselor was also supportive of parole. CCI Rubio found that petitioner
5 would probably pose a "moderate to low degree of threat to the public at this time, if
6 released from prison." (Exhibit H: Life Prisoner Evaluation April, 2002.)

7 The information before the Board overwhelmingly established that petitioner does
8 not pose an unreasonable risk to society if released from prison. The mental health
9 professional who has evaluated petitioner and make a risk assessment has concluded that
10 petitioner posed a low risk to society if released from prison. Furthermore, the
11 correctional counselors have determined that petitioner poses a low risk if released.
12 These experienced individuals have unanimously concluded that petitioner does not pose
13 an "unreasonable risk" to society if released from prison. These conclusions are
14 supported by petitioner's age, his new-found maturity, the "episodic" nature of his
15 offense, his institutional adjustment and his involvement in NA and other self-help and
16 therapy programs. Petitioner is currently 33 years old and has gained the maturity he was
17 lacking at the time of his commitment offense when he was only 19 years old. He has
18 gained insight into the negative impact his involvement with wanna-be gangsters had on
19 his life, the victim's life and society in general. He has been incarcerated since 1993.
20 While incarcerated, he has suffered no 115's, has engaged in no acts of violence and has
21 shown no propensity toward future criminality. Petitioner's offense, as recognized by the
22 experts evaluating petitioner, was episodic in nature, and the result of immaturity and
23 negative peer influences. (Exhibits E, F, G, H.) Nothing about petitioner or his offense
24 supports a finding that he poses *a current unreasonable risk* to society if released from
25 prison.

26 Furthermore, there is no current evidence to support a finding that petitioner
27 requires additional self-help or therapy to gain further insight into his offense in order to
28 be able to ensure that he no longer poses a danger to society. Rather, all the evidence

PETITION FOR WRIT OF HABEAS
CORPUS

1 before the Board shows that petitioner has participated in all of the available self-help
 2 programs and no longer requires self-help or therapy in order to ensure that he does not
 3 pose an unreasonable risk to society if released. As Dr. Saindon found, petitioner has
 4 "insight into the negative aspects of gang involvement." (Exhibit E, p. 5.) In concluding
 5 that petitioner poses less potential for violence than the average citizen, Saindon relied, in
 6 part, on petitioner's "insight." (Exhibit E, p. 5.) Similarly, when petitioner was
 7 evaluated by Dr. C. Schroeder, Ph.D. in December, 1996, Dr. Schroeder noted that at the
 8 time of the offense, petitioner had very limited insight into the causative factors which led
 9 to the offense. However, Schroeder noted that now, "In hindsight, he sees that he perhaps
 10 could have stopped the incident and now has great empathy and remorse for the family of
 11 the victim." (Exhibit I, p. 2.) Schroeder further noted that petitioner is now "able to
 12 think before acting." (Exhibit I, p. 2.) Petitioner has always accepted responsibility for
 13 his role in the commitment offense and his version of the offense is consistent with the
 14 prosecution's theory and the evidence presented against petitioner. Petitioner has always
 15 stated that he did not intend to kill the victim. This lack of intent is consistent with the
 16 prosecution's theory of the case. Petitioner was tried as an aider and abettor. The jury
 17 was instructed with the natural and probable consequences doctrine which permitted the
 18 jury to find that petitioner was guilty of second degree murder if he aided and abetted the
 19 fist fight and that the shooting was a natural and probable consequence of aiding and
 20 abetting the fight. (Exhibit D.) Thus, there was no requirement that petitioner form the
 21 specific intent to kill or be aware that anyone else formed the specific intent to kill.¹

22
 23
 24 ¹Under the natural and probable consequences doctrine, "... the aider and abettor in a
 25 proper case is not only guilty of the particular crime that to his knowledge his confederates are
 26 contemplating committing, but he is also liable for the natural and reasonable consequences of any
 27 act that he knowingly aided or encouraged." (*People v. Croy* (1985) 41 Cal.3d 1, 12, fn. 5;
 28 *People v. Prettyman* (1996) 14 Cal.4th 248.) Thus, the pivotal question is, "whether the
 collateral criminal act was the ordinary and probable effect of the common design or was a fresh
 and independent product of the mind of one of the participants, outside of, or foreign to, the
 common design." (*People v. Nguyen* (1993) 21 Cal.App.4th 518, 531 citing *People v. Kaufman*
 (1907) 152 Cal. 331, 337; See also, *People v. Durham* (1969) 70 Cal.2d 171, 182-183.) Each

(Exhibit D.) The Board's finding that petitioner lacks insight into the commission of his life offense is without any support and is based solely on ignorance of applicable California law governing aiding and abetting and the natural and probable consequences theory of second degree murder. There is no evidence to support a finding that petitioner lacks insight into the life offense and requires additional self-help to gain such insight.

In the instant case, the record is devoid of any evidence that of aggravated conduct reflecting an exceptionally callous disregard for human suffering. Rather, the offense was a routine second degree gang murder premised on an aiding and abetting theory and the natural and probable consequences doctrine. Petitioner was not the shooter and there was no evidence that he intended for the victim to be shot or had knowledge that the shooter had armed himself with a firearm during the fight. Rather, the testimony was that petitioner aided and abetted a fight which led to the commission of murder. As petitioner's counselor noted, the crime was "episodic" in nature and was not indicative of petitioner's character. (Exhibits G and H.) Furthermore, whether a particular second degree murder is exceptionally callous or especially heinous, atrocious or cruel is relevant only to inform a judgment that the inmate poses a current unreasonable threat to public safety. The "commitment offense" subfactors set forth in section 2402, subdivision (c), subsection (1) speak to this question- they focus on past acts as predictors of an inmate's future dangerousness, and are not meant to simply prolong punishment. Nothing about petitioner's commitment offense supports an inference that petitioner *currently* poses an unreasonable risk to society if released.

juror must be convinced, beyond a reasonable doubt, that the defendant aided and abetted the commission of a criminal act, and that the offense actually committed was a natural and probable consequence of that act. (*People v. Prettyman, supra*, 14 Cal.4th at 268.) In order to determine whether a particular criminal act was a natural and probable consequence of another criminal act aided and abetted, a jury must determine whether, "under all of the circumstances presented, a reasonable person in the defendant's position would have or should have known that the charged offense was a reasonably foreseeable consequence of the act aided and abetted by the defendant." (*People v. Nguyen, supra*, 21 Cal.App.4th at 531 citing, *People v. Woods* (1992) 8 Cal.App.4th 1570, 1587; See, *People v. Mendoza* (1998) 18 Cal.4th 1114, 1133; *People v. Price* (1991) 1 Cal.4th 324, 443.)

PETITION FOR WRIT OF HABEAS
CORPUS

1 Contrary to the finding of the Board, there is no evidence to support a finding that
2 petitioner's commitment offense supports an inference that he currently poses an
3 unreasonable risk to society if released. The Board's conclusion that petitioner remains a
4 danger to society, is so lacking in any medical, psychological or behavioral evidentiary
5 support that it is arbitrary and capricious. Petitioner's continued confinement absent
6 some evidence showing that he currently poses an unreasonable risk to society violates
7 the Fifth and Fourteenth Amendments of the United State Constitution. Petitioner should
8 be given a parole release date.

9 C. Reliance Solely on the Facts and Characterization of Petitioner's
10 Commitment Offense and Petitioner's Prior Record to Deny Parole
11 Resulted in a Violation of the Eighth and Fourteenth Amendment
12 Prohibition Against Cruel and Unusual Punishment.

13 Even assuming that petitioner's offense is "cruel, callous or dispassionate," over
14 and above that necessarily implied in second degree murder, the crime fails to support a
15 finding that petitioner currently poses an unreasonable risk to society if released.

16 Petitioner was only 19 years old at the time he committed the life offense and, as
17 discussed thoroughly above, petitioner was convicted as an aider and abettor. He has
18 been in state prison for 13 years. While in custody, he has stayed away from trouble
19 and/or violence and has been without any 115's during his entire term. The crime, as
20 discussed above, was episodic in nature and was not indicative of his character.

21 Petitioner was young and susceptible to negative peer influences. Other than the life
22 offense, petitioner had no prior violent criminal history. His only other contact with law
23 enforcement was when he was arrested for possessing cocaine. As a result of his arrest,
24 petitioner was diverted pursuant to Penal Code section 1000. Petitioner has obtained
25 treatment in prison for his drug use and has remained clean throughout his incarceration.
26 Nothing about petitioner's commitment offense supports an inference that he currently
27 poses an unreasonable risk to society. As discussed above, all of the available evidence,
28 including the professional opinions of the mental health professionals who evaluated

PETITION FOR WRIT OF HABEAS
CORPUS

1 petitioner and petitioner's correctional counselors, indicates that despite the facts of
2 petitioner's commitment offense, petitioner does not pose an unreasonable risk to society
3 if released from custody.

4 Petitioner recognizes that in *In re Danneberg, supra*, 34 Cal.4th at 1071, the
5 California Supreme Court concluded that "the Board in exercising its traditional broad
6 discretion, may protect public safety in each discrete case by considering the dangerous
7 implications of a life-maximum prisoner's crime individually." [emphasis in original.]
8 The court, however, added, "Of course, no inmate may be imprisoned beyond a period
9 that is constitutionally proportionate to the commitment offense or offenses." (*Id.*) In the
10 instant case, continual reliance by the Board on the facts and characterization of
11 petitioner's commitment offense to support a current finding of dangerousness violates
12 the state and federal prohibition against sentences which are cruel and unusual. When the
13 facts of petitioner's offense are considered in relation to the time served and performance
14 in prison, continual confinement based solely on the nature of petitioner's offense and
15 prior criminal history is constitutionally excessive.

16 The facts of petitioner's commitment offense will never change. However, it does
17 not necessarily follow that petitioner will always remain a danger to society, especially in
18 light of the overwhelming evidence that petitioner no longer poses a danger to society. In
19 the instant case, there is no evidence to support the Board's finding that the facts of
20 petitioner's commitment offense render him a danger to society if released from custody.
21 Petitioner has served more than 13 years in custody. Petitioner's rehabilitation, as
22 documented in the psychological evaluations and counselor's report, clearly establishes
23 that petitioner poses no danger to society if released. In the instant case, reliance on the
24 facts of petitioner's commitment offense and his prior record are insufficient to justify the
25 denial of parole. Petitioner's continued confinement based solely such immutable factors
26 violates the state and federal prohibition against sentences which are cruel and unusual.

III

CONCLUSION

For all of the foregoing reasons, this Court should grant writ relief and direct the Board of Prison Terms to conduct a parole eligibility hearing that complies with the requirements in *In re Rosenkrantz, supra*, 29 Cal.4th at 625-626, 656-657 and *In re Dannenberg, supra*, 34 Cal.4th 1061.

Dated: August 15, 2006

Respectfully submitted,

MARILEE MARSHALL & ASSOCIATES, INC.


MARILEE MARSHALL


JENNIFER PEABODY

Attorneys for Petitioner

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare:

I am over eighteen (18) years of age, and not a party to the within cause; my business address is 523 West Sixth Street, Suite 1109, Los Angeles, CA. 90014. That on August 15, 2006, I served a copy of the within:

PETITION FOR WRIT OF HABEAS CORPUS

On the interested parties by placing them in an envelope (or envelopes) addressed respectively as follows:

Office of the Attorney General
P.O. Box 85266
San Diego, CA 92186-5266

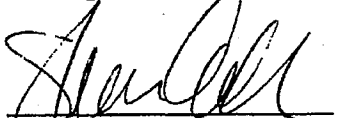
Mr. Sieu Phong Ngo
J-07024/ B-wing 319-up
CTF- Soledad
P.O. Box 689
Soledad, CA 93960-0689

Office of the District Attorney
700 Civic Center Drive West
Santa Ana, CA 92701

Each said envelope was then, on August 15, 2006, sealed and deposited in the United States mail at Los Angeles, California, the county in which I maintain my office, with postage fully prepaid.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 15, 2006, at Los Angeles, California.


SHANNON CALLAHAN

1 **MARILEE MARSHALL**
State Bar No. 101046
2 **JENNIFER PEABODY**
State Bar No. 198746
3 **MARILEE MARSHALL & ASSOCIATES, INC.**
Attorneys at Law
4 523 W. Sixth Street
Suite 1109
5 Los Angeles, CA 90014
6 (213) 489-7715
7 Attorneys for Petitioner

8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF ORANGE**

10
11 **IN RE SIEU NGO**

12 **On Habeas Corpus.**

Case No. _____

Related Case No. C199109

13 **EXHIBITS IN SUPPORT OF**
14 **PETITION FOR WRIT OF HABEAS**
CORPUS

15
16
17
18
19
20
21
22
23
24
25
26
27
28 **PETITION FOR WRIT OF HABEAS**
CORPUS

TABLE OF EXHIBITS

Exhibit A	Transcript of Parole Hearing 2/8/2006	1
Exhibit B	Transcript of Parole Hearing 5/13/2002	71
Exhibit C	Transcript of Parole Hearing 8/3/2004	139
Exhibit D	Support letter from Donald G. Rubright	206
Exhibit E	Psychological Evaluation 1/23/2002	210
Exhibit F	Life prisoner Evaluation 8/2005	218
Exhibit G	Life Prisoner Evaluation 5/2004	224
Exhibit H	Life Prisoner Evaluation 5/2002	232
Exhibit I	Psychological Evaluation 12/27/1996	238

EXHIBIT A

SUBSEQUENT PAROLE CONSIDERATION HEARING
STATE OF CALIFORNIA
BOARD OF PAROLE HEARINGS

In the matter of the Life)
Term Parole Consideration)
Hearing of:)

CDC Number J-07024

SIEU NGO)
_____)

**INMATE
COPY**

CORRECTIONAL TRAINING FACILITY
SOLEDAD, CALIFORNIA

FEBRUARY 8, 2006

9:58 A.M.

PANEL PRESENT:

Ms. Sandra Bryson, Presiding Commissioner
Mr. Doug Filangeri, Deputy Commissioner

OTHERS PRESENT:

Mr. Sieu Ngo, Inmate
Ms. Tara Rutledge, Attorney for Inmate
Mr. Tom Crofoot, Deputy District Attorney
Correctional Officers Unidentified

CORRECTIONS TO THE DECISION HAVE BEEN MADE

_____	No	See Review of Hearing
_____	Yes	Transcript Memorandum

Sue Gerdes, Peters Shorthand Reporting

ii

INDEX

	<u>PAGE</u>
Proceedings.....	1
Case Factors.....	5
Pre-Commitment Factors.....	6
Post-Commitment Factors.....	12
Parole Plans.....	24
Closing Statements.....	47
Recess.....	59
Decision.....	60
Adjournment.....	66
Transcriber Certification.....	67

--oOo--

P R O C E E D I N G S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

DEPUTY COMMISSIONER FILANGERI: We're on record.

PRESIDING COMMISSIONER BRYSON: This is a Subsequent Parole Consideration Hearing for Sieu Ngo CDC number J-07024. Today's date is February 8th, 2006 and the time is 9:58 A.M. We are located at Correction Training Facility in Soledad. The inmate was received on February 1st, 1994 committed from Orange County. The life term began February 1st, 1994. The inmate's minimum eligible parole date is May 24th, 2003. The controlling offense for which the inmate is committed is set forth in case number C199109 charging in count one a violation of Penal Code 187 murder second enhanced with a weapon Penal Code 1222A sub one, armed with a firearm to wit a 22 caliber pistol for which the inmate received a term of 15 years to life plus one year. This hearing is being recorded. For the purpose of voice identification each of us will state our first and last name, spelling the last name. When it is your turn Sir, after you spell your last name please state your CDC number. I will start and then go to my left, Sandra Bryson B-R-Y-S-O-N Commissioner Board of Parole Hearings.

1 DEPUTY COMMISSIONER FILANGERI: Deputy
2 Commissioner Doug Filangeri F-I-L-A-N-G-E-R-I.

3 DEPUTY DISTRICT ATTORNEY CROFOOT: Tom
4 Crofoot C-R-O-F-O-O-T Orange County District
5 Attorney's Office.

6 ATTORNEY RUTLEDGE: Tara E. Rutledge R-U-
7 T-L-E-D-G-E Attorney for Mr. Ngo.

8 INMATE NGO: Inmate Ngo N-G-O first name
9 Sieu S-I-E-U middle name Phong P-H-O-N-G CDC
10 number J-07024.

11 PRESIDING COMMISSIONER BRYSON: I note
12 for the record that we have two correctional
13 peace officers in the room who are here for
14 security purposes. Commissioner Filangeri is
15 there any confidential material in the file and
16 if so will it be used today?

17 DEPUTY COMMISSIONER FILANGERI: There is
18 none we will be using today.

19 PRESIDING COMMISSIONER BRYSON: All right
20 I passed the hearing checklist marked exhibit
21 one to your counsel and I believe, do you have
22 that District Attorney?

23 DEPUTY DISTRICT ATTORNEY CROFOOT: I have
24 it as well.

25 PRESIDING COMMISSIONER BRYSON: All right
26 and confirming that the District Attorney has
27 the documentation.

1 DEPUTY DISTRICT ATTORNEY CROFOOT: I have
2 thank you.

3 PRESIDING COMMISSIONER BRYSON: And
4 counsel you have the documentation.

5 ATTORNEY RUTLEDGE: Yes.

6 PRESIDING COMMISSIONER BRYSON: Thank
7 you. Are there any additional documents to be
8 submitted counsel?

9 ATTORNEY RUTLEDGE: No, just that the
10 packet that we provided dated February the 8th I
11 believe --

12 PRESIDING COMMISSIONER BRYSON: We do
13 have this.

14 ATTORNEY RUTLEDGE: Okay other than that
15 we have nothing to submit.

16 DEPUTY DISTRICT ATTORNEY CROFOOT: I have
17 not seen that, can you just describe it for me?

18 ATTORNEY RUTLEDGE: Sure, it's Mr. Ngo
19 has prepared sort of a, it's entitled Memorandum
20 of Evidence in Law and Support of Parole
21 Suitability where he tells the board, well, it
22 includes parole plans, what his place of
23 residence and employment, psych evaluation
24 reports, life prisoner evaluation reports,
25 includes his chronos and certificates which are
26 all in the C File, and support letters. Last I
27 checked everything in here is in the C File

6

1 except the first two sections. Is that correct
2 or not?

3 INMATE NGO: I don't know.

4 ATTORNEY RUTLEDGE: Everything else
5 beginning with the psych eval should -

6 INMATE NGO: Should be all in there.

7 ATTORNEY RUTLEDGE: Is all in the C File.

8 So if you want to review this I'll let you.

9 DEPUTY DISTRICT ATTORNEY CROFOOT: That's
10 fine thank you.

11 PRESIDING COMMISSIONER BRYSON: And we
12 will be going over those first two sections
13 basically here in the hearing. All right Sir,
14 today you and your attorney signed a document
15 marked exhibit two regarding ADA Accommodation
16 Hearing Procedures and Inmate's Rights. Counsel
17 do you have any comments or concerns regarding
18 the ADA Rights or the inmate's ability to
19 participate in the hearing?

20 ATTORNEY RUTLEDGE: No.

21 PRESIDING COMMISSIONER BRYSON: Are there
22 any preliminary objections?.

23 ATTORNEY RUTLEDGE: No, not at this time.

24 PRESIDING COMMISSIONER BRYSON: All
25 right, will the inmate be speaking with the
26 panel?


27 ATTORNEY RUTLEDGE: According to what he

1 wrote there he will be speaking to the panel in
2 all issues other than the commitment offense
3 which he spoke to the board I believe at his
4 first hearing and he notes in his Memorandum,
5 let me just quote from there, "further more I
6 have fully and freely, I confess and accept the
7 facts of my personal culpability and
8 responsibility for the life term offense." So
9 that would conclude his comments on the offense.
10 Other than that though he will discuss other
11 issues with the board.

12 **PRESIDING COMMISSIONER BRYSON:** All right
13 then Sir if you are going to address the panel
14 we will swear you in. So would you raise your
15 right hand please, do you solemnly swear or
16 affirm that the testimony you give at this
17 hearing will be the truth, the whole truth and
18 nothing but the truth?

19 **INMATE NGO:** Yes I swear.

20 **PRESIDING COMMISSIONER BRYSON:** All right
21 I will read the facts of the crime into the
22 record, information obtained from the probation
23 officer's report pages three and four. On
24 September 18th, 1992 Angel Gonzales was beaten
25 and shot to death near Fullerton High School as
26 he was walking home after school. An
27 investigation revealed that earlier in the day



1 the victim, a member of the "Fullerton's Toker's
2 Town" a Latin gang and member of "Fullerton's
3 Boyz" B-O-Y-Z an Asian gang were at a McDonald's
4 restaurant near the high school. The victim and
5 No, that's N-O Muhamed M-U-H-A-M-E-D, had a
6 confrontation with each claiming there each
7 respective gang affiliations. After this non
8 physical altercation the group of Asians which
9 at the time included Sieu Phong Ngo obtained a
10 firearm. Ngo, N-G-O, and the Asian gang members
11 returned to the school where they waited for
12 Gonzales. As he walked home he was attacked and
13 beaten. During the physical altercation the
14 victim was shot one time in the back by Usumang
15 U-S-U-M-A-N-G last M-U-H-A-M-E-D, the group of
16 five Asian gang members including Ngo N-G-O fled
17 the area after the shooting. Angel Gonzales
18 died at the scene as a result of the gun shot
19 wound. Ngo N-G-O, Jimmy Dao D-A-O and Asat Cham
20 A-S-A-T-C-H-A-M fled to the state of Washington.
21 They were subsequently apprehended there and the
22 murder weapon, a stolen 22 caliber hand gun was
23 recovered in the vehicle. All right Sir, as to
24 your pre-conviction record you have none as a
25 juvenile. We have as to your adult arrest
26 history and conviction's, we have that on March
27 30th, 1992 you were arrested by the San Gabriel

1 Police Department for possession of a controlled
2 substance, three pieces of rock cocaine. On May
3 7th, 1992 that was diverted pursuant to Section
4 1000 of the Penal Code. And then on September
5 22nd, 1992 you were arrested by the Olympia
6 Sherriff's Office for possession of stolen
7 property. This case was subsequently dismissed
8 and that of course ensued with the instant
9 crime. And that comports with your record here
10 so they are the same. Okay, all right, as to
11 your personal history, it's cleared also by the
12 way that you do have a strong stable family and
13 good social support.. Just reviewing it and then
14 your welcome to add to it if you would like.
15 You were born in Vietnam on May 18th 1973.

16 **INMATE NGO:** Correct.

17 **PRESIDING COMMISSIONER BRYSON:** And you
18 resided in the United States since 1979 so that
19 means that you basically came here when you were
20 six years old. Is that right?

21 **INMATE NGO:** Correct.

22 **PRESIDING COMMISSIONER BRYSON:** In 1991
23 you graduated from Fullerton High School and
24 subsequently attended Fullerton Community
25 College and Pasadena City College. As to your
26 high school courses and then your subsequent
27 college courses, where were you headed

1 professionally in both high school and college
2 as you went through?

3 INMATE NGO: Well I was trying major in
4 small business and you know hopefully start my
5 own business one day.

6 PRESIDING COMMISSIONER BRYSON: Okay, we
7 have here that you completed ten units and your
8 major was business. Were those semester units,
9 is that what that's referencing?

10 INMATE NGO: Yeah, semester.

11 PRESIDING COMMISSIONER BRYSON: All
12 right, you were employed as a telemarketer and
13 worked odd jobs. So you were working while you
14 were in college?

15 INMATE NGO: Right.

16 PRESIDING COMMISSIONER BRYSON: You were
17 employed at your family's liquor store and
18 resided with your parents. We note that you had
19 problems with substance abuse including, it says
20 controlled substances or alcohol. Would you
21 explain that a little more. First of all your
22 record is very A characteristic of your getting
23 involved in this in the first place so that's
24 where I'm trying to gain some understanding.
25 You were in a gang, or a want to be gang at the
26 time?

27 INMATE NGO: Correct.

11

1 **PRESIDING COMMISSIONER BRYSON:** And what
2 go you motivated into the gang, I can't imagine
3 actually from your record?

4 **INMATE NGO:** Well you know as kids you
5 always you know feel like you want to belong to
6 somebody or be a part of something you know.

7 **PRESIDING COMMISSIONER BRYSON:** Right.

8 **INMATE NGO:** I mean at that time you
9 know, that's how I felt when I was a kid you
10 know, wanted to belong to something you know.
11 Never thinking something like this leads to you
12 know what happened in this instant case but you
13 know that's my mistake you know choosing the
14 wrong friends you know, not knowing any better
15 but now your know I realize what I did was you
16 know by choosing wrong friends you know can cost
17 you your life you know, ruin your life.

18 **PRESIDING COMMISSIONER BRYSON:** Were your
19 parents aware of your involvement with gangs and
20 or drugs?

21 **INMATE NGO:** At that time I don't know,
22 no they weren't aware of it you know because you
23 know I guess you know you can say I hide from
24 them or what not because like was said earlier
25 we just more like want to be gang member. We
26 just like, there was five of us we like friends
27 you know we just hang around you know do what

10

1 kids do, you know, play arcade and what not you
2 know, that's about it.

3 PRESIDING COMMISSIONER BRYSON: Were your
4 parents both employed?

5 INMATE NGO: Yes they were, we own -- at
6 that time we had a family business, a liquor
7 store.

8 PRESIDING COMMISSIONER BRYSON: Right.

9 INMATE NGO: Before that my dad you know
10 he was into making signs and stuff before we
11 purchased a liquor store. From that point on we
12 just run a liquor store, a family liquor store
13 in Anaheim.

14 PRESIDING COMMISSIONER BRYSON: You have
15 brothers and sisters?

16 INMATE NGO: I have one older brother,
17 two older sisters and one younger brother, and
18 one younger sister. There are all doing well, I
19 mean, my brothers getting married soon and they
20 all graduate, most of them graduated from
21 college and my little sister, I don't know,
22 right now I really don't know where she is
23 because of what happened to me and stuff like
24 that you know, my dad and he was passing away.
25 I don't know what happened, she came visit me
26 one time and she just moved out and I have never
27 heard from her again.

13

11

1 PRESIDING COMMISSIONER BRYSON: I see.

2 INMATE NGO: That's the only person,
3 thing I know about what -- I don't even know
4 where she is right now at this point, my little
5 sister so I would like to look for her when I
6 get out though if I'm given a second chance.

7 PRESIDING COMMISSIONER BRYSON: Okay, now
8 is your mom still living?

9 INMATE NGO: Yes my mom is still living.

10 PRESIDING COMMISSIONER BRYSON: And how
11 is she doing?

12 INMATE NGO: She's doing well.

13 PRESIDING COMMISSIONER BRYSON: Is she
14 working or is she retired?

15 INMATE NGO: Right now she's going to
16 school right now. She's trying to learn English
17 she said you know so it's a good thing to keep
18 her occupied you know because since my dad
19 passed away and she really you know had no one
20 to you know talk to so you know friends wise and
21 what not so beside family members so she's going
22 to school from what I understand.

23 PRESIDING COMMISSIONER BRYSON: All
24 right, let's go to post-conviction factors and
25 Commissioner -- do you have any questions first
26 of all relevant to the personal history?

27 DEPUTY COMMISSIONER FILANGERI: Yeah

14

1 thanks I do. Are you suggesting that your
2 sister's disappearance has something to do with
3 your imprisonment?

4 **INMATE NGO:** I think she was maybe
5 traumatized and I know she feel you know she's,
6 I don't know I can't personally say how she
7 feels but I think it might have a little affect
8 on her because you know she just moved away you
9 know so. My family is still looking for her so.

10 **PRESIDING COMMISSIONER BRYSON:** How old
11 is she now?

12 **INMATE NGO:** She should be about 28 right
13 now, 28, 29.

14 **DEPUTY COMMISSIONER FILANGERI:** So what
15 makes you think she might become traumatized?

16 **INMATE NGO:** At the time my dad was sick
17 and he was dying of cancer and me being in
18 prison I guess it just, she didn't want to be
19 around at that time I guess. I don't know what
20 the reason, I would like to know but I can't
21 answer that at this point right now.

22 **DEPUTY COMMISSIONER FILANGERI:** Well what
23 would stop me from thinking that you're just
24 trying to exploit the situation to garner some
25 sympathy from the panel members?

26 **INMATE NGO:** I'm not, not at all.

27 **DEPUTY COMMISSIONER FILANGERI:** That's

1 all the questions I have.

2 **PRESIDING COMMISSIONER BRYSON:** All
3 right, we'll go to post conviction factors with
4 Commissioner Filangeri.

5 **DEPUTY COMMISSIONER FILANGERI:** Okay
6 thanks. The purpose of this part of the hearing
7 is to detail your prison behavior since you last
8 appeared before the board. I think that was
9 August 5th, 2004 where you were denied for one.
10 That was your first Subsequent Parole
11 Consideration Hearing.

12 **INMATE NGO:** I was denied two years for
13 my first one and my Subsequent was one year.

14 **DEPUTY COMMISSIONER FILANGERI:** Right,
15 that was 2004 your first Subsequent Parole
16 Consideration Hearing resulted in a one year
17 denial.

18 **INMATE NGO:** Right, correct Sir.

19 **DEPUTY COMMISSIONER FILANGERI:** The first
20 document that I want to refer to is the
21 Correctional Counselor's Report provided by F.I.
22 DeGuzman D-E-G-U-Z-M-A-N its dated 6/16/05.
23 Under post-conviction factors the counselor
24 writes that you've remained at CTF in the
25 general population, medium A with a mandatory
26 minimum placement score of 19 although your
27 actual classification score, but for your being

16

1 a lifer without a date would have been zero.
2 The writer refers us to the post conviction
3 progress report which says that you're doing
4 independent studies through Coast Line Community
5 College. I saw six items in the C File from
6 Coast Line College about training material,
7 tests, CDs and stuff like that. Each one of
8 those items correspond to a particular course?

9 **INMATE NGO:** Yes, like some course
10 require you know, it's enclosed with the books
11 along which explained the program itself but
12 since we can't, we don't allow the use of
13 computers so it's pretty much pointless so I had
14 to return it you know.

15 **DEPUTY COMMISSIONER FILANGERI:** So if
16 they come on CD's you can't do the class?

17 **INMATE NGO:** No, the CD just part of the
18 curriculum but it's just basically what there
19 teachers like explaining what's in the class
20 itself.

21 **DEPUTY COMMISSIONER FILANGERI:** So you
22 can still do the class with the books and still
23 pass the tests?

24 **INMATE NGO:** Yes.

25 **DEPUTY COMMISSIONER FILANGERI:** You have
26 enough to do to pass the tests?

27 **INMATE NGO:** Yes, you have a syllabus, it

1 has all the curriculum in there.

2 DEPUTY COMMISSIONER FILANGERI: Okay, I
3 saw that first item was I think dated around
4 2005, have you actually completed any of the
5 course work yet?

6 INMATE NGO: For the Coast Line, yes.

7 DEPUTY COMMISSIONER FILANGERI: Do you
8 have certificates?

9 INMATE NGO: There's no certificate but I
10 have grades which unfortunately I don't have it
11 hear but I have listed all the courses I've
12 completed. If you look -

13 DEPUTY COMMISSIONER FILANGERI: What
14 section of that is that in the packet?

15 INMATE NGO: Page seven of my Memorandum.

16 DEPUTY COMMISSIONER FILANGERI: Okay
17 current academic and self help programs and down
18 here, here it is Coast Line College.

19 INMATE NGO: Right.

20 DEPUTY COMMISSIONER FILANGERI: So you
21 have completed biology 100.

22 INMATE NGO: Correct.

23 DEPUTY COMMISSIONER FILANGERI: Business
24 110.

25 INMATE NGO: 120.

26 DEPUTY COMMISSIONER FILANGERI: I see,
27 this one says 110.

B

1 INMATE NGO: Oh typo.

2 DEPUTY COMMISSIONER FILANGERI: Okay,
3 counseling 105.

4 INMATE NGO: Correct.

5 DEPUTY COMMISSIONER FILANGERI:
6 Psychology 100.

7 INMATE NGO: Correct.

8 DEPUTY COMMISSIONER FILANGERI: Sociology
9 100.

10 INMATE NGO: Correct.

11 DEPUTY COMMISSIONER FILANGERI: Spanish
12 180.

13 INMATE NGO: Correct.

14 DEPUTY COMMISSIONER FILANGERI: And your
15 currently enrolled in Health 100?

16 INMATE NGO: No that's the old from a
17 previous board.

18 ATTORNEY RUTLEDGE: Here maybe this one
19 will I think, in fact this does not have the
20 typo. I didn't realize they weren't the same so
21 go right ahead.

22 DEPUTY COMMISSIONER FILANGERI: I see
23 okay. Okay this one says Business 120. Spanish
24 180, Health 100 you've completed that?

25 INMATE NGO: Yes.

26 DEPUTY COMMISSIONER FILANGERI:
27 Philosophy.

17

1 INMATE NGO: Yes.

2 DEPUTY COMMISSIONER FILANGERI:

3 Communications 100.

4 INMATE NGO: Yes.

5 DEPUTY COMMISSIONER FILANGERI: Geology

6 100.

7 INMATE NGO: Yes.

8 DEPUTY COMMISSIONER FILANGERI: History

9 175.

10 INMATE NGO: Yes.

11 DEPUTY COMMISSIONER FILANGERI: Astronomy

12 100.

13 INMATE NGO: Yes.

14 DEPUTY COMMISSIONER FILANGERI: Marine

15 Science 100.

16 INMATE NGO: Correct.

17 DEPUTY COMMISSIONER FILANGERI: And your

18 currently enrolled in Humanities and Political

19 Science.

20 INMATE NGO: Correct.

21 DEPUTY COMMISSIONER FILANGERI: Okay,

22 let's see, 13 classes figuring there what, about

23 worth three units a piece?

24 INMATE NGO: Three units except for

25 Spanish its five units.

26 DEPUTY COMMISSIONER FILANGERI: So you

27 are more than halfway towards your AA degree?

20

1 INMATE NGO: I have 41 unit.

2 DEPUTY COMMISSIONER FILANGERI: How many?

3 INMATE NGO: 41 units currently.

4 DEPUTY COMMISSIONER FILANGERI: And you
5 need 60?

6 INMATE NGO: Sixty.

7 DEPUTY COMMISSIONER FILANGERI: Great,
8 are you taking all the necessary core classes
9 that I'm assuming there are some classes that
10 have to be taken?

11 INMATE NGO: Yes, I still have to take
12 English which is required and math so Political
13 Science is required so I'm taking it right now.
14 After I take those two classes I will be taking
15 Small Business and Business Management.

16 DEPUTY COMMISSIONER FILANGERI: Great.

17 INMATE NGO: To upgrade.

18 DEPUTY COMMISSIONER FILANGERI: Great, it
19 seems to me I noticed that a test of Adult Basic
20 Education, it was 12.9.

21 INMATE NGO: Correct.

22 DEPUTY COMMISSIONER FILANGERI: All right
23 and I also saw a certificate of High School
24 Graduation from Fullerton in 1992.

25 INMATE NGO: Correct.

26 DEPUTY COMMISSIONER FILANGERI: Okay, all
27 right. Let's go back to the Counselor's post-

1 conviction progress report. It says that you
2 are assigned as the culinary store keeper office
3 aid with satisfactory grades. You've got
4 certificates of completion in automotive
5 refinishing in 1997 and upholstery in 1997. Now
6 that was when you were at LA County.

7 **INMATE NGO:** Lancaster.

8 **DEPUTY COMMISSIONER FILANGERI:** Lancaster
9 that's it, Lancaster. You haven't had any
10 vocational upgrading since you've been at CTF?

11 **INMATE NGO:** Well the only one that they
12 have right now it was drafting and at that time
13 was computer data.

14 **DEPUTY COMMISSIONER FILANGERI:** It says
15 that your on the computer processing or the data
16 processing waiting list but I heard that people
17 been on that list forever.

18 **INMATE NGO:** Forever, it's so I have a
19 upgrade on forklift things which is trade in
20 itself, a forklift operator.

21 **DEPUTY COMMISSIONER FILANGERI:** That's
22 right, you didn't mention it. I did see that.

23 **PRESIDING COMMISSIONER BRYSON:** It's in
24 here.

25 **DEPUTY COMMISSIONER FILANGERI:** 2002, I
26 saw that.

27 **INMATE NGO:** I am certified and I have a

22

1 new updated license I just been renewed.

2 DEPUTY COMMISSIONER FILANGERI: Do you
3 use that forklift operator's license in this --

4 INMATE NGO: Facility yes to move.

5 DEPUTY COMMISSIONER FILANGERI: Culinary
6 store keeper office aid?

7 INMATE NGO: Right.

8 DEPUTY COMMISSIONER FILANGERI: Good.
9 Are there any more upgrades you can do on that?

10 INMATE NGO: Besides fork lifting?

11 DEPUTY COMMISSIONER FILANGERI: Something
12 about jacks you had some sort of certification.

13 INMATE NGO: Those are hand jacks, it's
14 just like manual by my self. It's pretty easy
15 to operate, they electric ones to though.

16 DEPUTY COMMISSIONER FILANGERI: Okay in
17 terms of your education I also saw some peer
18 education back in 1999 for sexual transmitted
19 disease, HIV, AIDS, TB and hepatitis.

20 INMATE NGO: Correct.

21 DEPUTY COMMISSIONER FILANGERI: I saw a
22 document for anger management in 2005 and some
23 2000 documents for Salesmanship and Key to
24 Fatherhood, something through the Muslim Chapel
25 was it?

26 INMATE NGO: Correct.

27 DEPUTY COMMISSIONER FILANGERI: Okay

1 let's go to the psychological evaluation. My
2 file indicates that there was a new
3 psychological evaluation ordered 1/20/06 which I
4 would guess is the reason why I'm having to use
5 the last one from 2002. I realize it's old but
6 it's not particularly negative so I wouldn't be
7 surprised if we did have a new one it wouldn't
8 be similar. And you should also know that the
9 board has a new directive that if your not
10 involved in the -- if your not Triple CMS or EOP
11 then we are not going to be asking for updated
12 psych reports.

13 **INMATE NGO:** No I'm not.

14 **DEPUTY COMMISSIONER FILANGERI:** So this
15 one is dated 1/31/02 and it's signed by, no it's
16 not signed by C. Saindon S-A-I-N-D-O-N PHD,
17 staff psychologist although he appears to be the
18 writer. It is signed by Bill Zika Z-I-K-A PHD
19 Senior Supervising Staff Psychologist. Under
20 clinical assessment on page four, current
21 diagnostic impressions on axis I no contributory
22 clinical disorder, axis II deferred, global
23 assessment of functioning score is 90. The
24 examiner writes that there's no evidence that
25 inmate Ngo currently suffers from any
26 psychiatric illness. Under review of the life
27 crime the inmate stated that he agreed with the

1 version of the crime given in the Central File
2 and the verdict from sentencing, however he
3 stated that no one intended to kill the victim.
4 Under assessment of dangerousness item 14 the
5 examiner writes that cocaine use and gang
6 affiliation resulted in the current offense.
7 Under item C, the most significant risk factors
8 of this inmate as a precursor to violence or
9 return to criminal behavior would be his re-
10 involvement with others having a criminal
11 history and or gang members. If use of alcohol
12 and or drugs in isolation from his family
13 members. Clinical observations, the inmate is
14 competent and responsible for his behavior.
15 Inmate does not have a mental disorder which
16 would resuscitate treatment either during his
17 incarceration period or following parole. In
18 back of the short file there is several items
19 I'd like to make note of. Oh yeah, here's the
20 tape test score, that was back in 1997 for 12.9
21 and there's a list of disciplinaries, there are
22 no 115's, two 128's minor in 1997 and 2000 for
23 failure to respond to a medical duckett, and a
24 covered window respectively. Here is the
25 certificate to anger management that I already
26 said, talked about. And there's a series of
27 chronos, one 11/06 for NA attendance, 12/8/05

1 completion of the Phobic Anger Management Class,
2 10/28/05 a laudatory chrono signed by
3 Correctional Supervising Cook W. Rogers R-O-G-E-
4 R-S, says he finds you to be a reliable worker
5 who needs little or no supervision working in
6 the culinary warehouse store keeper. Says that
7 you are responsible for many tasks that require
8 attention to detail and accuracy and the writer
9 believes you would be an asset to any employer
10 upon release given your range of skills
11 including certification for the operation of
12 forklifts and power jacks. 6/13/05 is a chrono
13 for NA, 3/12/05 Narcotics Anonymous, 1/5/05
14 Correctional Supervising Cook W. Rogers writes
15 again that your , commending your outstanding
16 performance of your assignment, your still in
17 the culinary warehouse store keeper and Rogers
18 believes you can be relied upon to take the
19 initiative to ensure the varies duties your
20 responsible for are completed and you would be
21 an asset to any employer upon release given your
22 range of skills. 10/22/04 Narcotics Anonymous,
23 9/27/04 NA. Is there anything else that you
24 want to call the panel's attention to regarding
25 behavior during the last, since August of 2004?
26 INMATE NGO: That should be it for my
27 incarceration for what I been doing but as you

24

1 can I see I have a lot of support letter's here.

2 DEPUTY COMMISSIONER FILANGERI: That's in
3 another segment of the hearing.

4 INMATE NGO: All right.

5 DEPUTY COMMISSIONER FILANGERI: Right now
6 I am just focusing on your behavior in the
7 institution and I don't mean to cut you off.

8 INMATE NGO: Oh no problem.

9 DEPUTY COMMISSIONER FILANGERI: If there
10 is something else that you have done that you
11 want to call our attention to now would be the
12 time.

13 INMATE NGO: No that would be all.

14 DEPUTY COMMISSIONER FILANGERI: Okay.

15 INMATE NGO: Thank you.

16 DEPUTY COMMISSIONER FILANGERI: Thank
17 you.

18 PRESIDING COMMISSIONER BRYSON: All
19 right, we'll talk about your parole plans and
20 support which I have to say is extensive and --

21 DEPUTY COMMISSIONER FILANGERI: I'm
22 sorry, I forgot to mention the certificate that
23 Mr. Ngo handed us that 2005 certificate of
24 appreciation for your generous donation to the
25 5th Annual Correctional Training Facilities
26 Teddy Bear Drive. I'm sorry.

27 PRESIDING COMMISSIONER BRYSON: Thank

27

1 you. It's very well thought out and well
2 organized, that's very helpful to the board.

3 INMATE NGO: Thank you.

4 PRESIDING COMMISSIONER BRYSON: Let's go
5 to your parole plans and I'd like to read these,
6 these seem very current, I assume they are.

7 INMATE NGO: Yes they are.

8 PRESIDING COMMISSIONER BRYSON: We will
9 go with this first. You've organized it in a
10 liable way. First you have articulated what you
11 plan to do in the first year of adjustment and
12 then for the next two to five years. So for the
13 first one to twelve months you have written that
14 you will first report to work at "First China
15 Kitchen" or "Hot Wok" which will meet your
16 immediate needs. So you would be working as a
17 cook there?

18 INMATE NGO: Waiter, cashier, it don't
19 matter.

20 PRESIDING COMMISSIONER BRYSON: Okay
21 second you would continue working toward
22 completing your Associates Arts Degree in
23 Liberal Arts at Coast Line Community College.

24 INMATE NGO: Correct.

25 PRESIDING COMMISSIONER BRYSON: Third you
26 would reinforce your relationship with your
27 family members, academically and technically.

1 Fifth or fourth you would continue to attend and
2 participate in the local Narcotics Anonymous
3 Meetings and then you would also purchase an
4 automobile for transportation. All right now,
5 this stuff tails into where you would plan to
6 reside during this time which would be with your
7 mother, Phuong Hung Ngo at Monterey Park. Is
8 there anyone else living at home right now with
9 her?

10 INMATE NGO: My little brother, he's
11 taking care of her.

12 PRESIDING COMMISSIONER BRYSON: And how
13 is he doing, what's he do?

14 INMATE NGO: He works at Kaiser
15 Permanente.

16 PRESIDING COMMISSIONER BRYSON: Oh he
17 does.

18 INMATE NGO: So, he's taking care of her.

19 PRESIDING COMMISSIONER BRYSON: And does
20 he have a record of any sort?

21 INMATE NGO: No, I am the only one.

22 PRESIDING COMMISSIONER BRYSON: Okay well
23 that's good actually. All right and then -- let
24 me go ahead now at this point and divert again
25 to this place of residence, places of residence
26 that you allude to. You have an alternative
27 residency that you've planned in the event

27

1 something unforeseen occurs. I've made
2 arrangements to obtain housing, transportation,
3 food, clothing at the following addresses. Now
4 are these all relatives?

5 INMATE NGO: Yes.

6 PRESIDING COMMISSIONER BRYSON: All
7 right, and he lists Lisa and Raymond Lau L-A-U
8 in Alhambra, is that Chi Fong Ngo?

9 INMATE NGO: Chi Fong Ngo.

10 PRESIDING COMMISSIONER BRYSON: Chi Fong
11 Ngo thank you, that's in Monterey. And Julie
12 and Raymond Seeto S-E-E-T-O in Placentia
13 California.

14 INMATE NGO: Right.

15 PRESIDING COMMISSIONER BRYSON: That's
16 good so you'll have alternatives and I believe
17 I've seen support letters in here that we will
18 be going over from these people. Okay, so that
19 would be -- upon my release I will be working at
20 the following places of business, so here you
21 are giving options?

22 INMATE NGO: Correct.

23 PRESIDING COMMISSIONER BRYSON: All
24 right, now you're listing these, you realize
25 does not constitute verification in our minds
26 because this is your out reach. Have you, how
27 have you contacted these establishments, have

20

1 you had personal contact with them or --

2 INMATE NGO: Yes I have personal contact
3 with them because my uncle owns these, the First
4 China Kitchen and Hot Wok.

5 PRESIDING COMMISSIONER BRYSON: I see.

6 INMATE NGO: And he just started a new
7 business called Empire Lighting, one in New
8 Orleans Heights and one in Riverside.

9 PRESIDING COMMISSIONER BRYSON: And what
10 is Empire Lighting, what is it like?

11 INMATE NGO: From my understanding it's
12 just selling lamps and stuff.

13 PRESIDING COMMISSIONER BRYSON: Lamps and
14 things?

15 INMATE NGO: Kitchen furniture and what
16 not, accessories.

17 ATTORNEY RUTLEDGE: He has a letter in
18 there to.

19 INMATE NGO: Yeah.

20 PRESIDING COMMISSIONER BRYSON: All
21 right, okay good.

22 INMATE NGO: Updated business card along
23 with it.

24 PRESIDING COMMISSIONER BRYSON: Okay.

25 INMATE NGO: So and AC Financial which is
26 my brother in law where my sister Julie, Raymond
27 Seeto they own that company.

31

1 **PRESIDING COMMISSIONER BRYSON:** I see,
2 and what would you do for them do you think?

3 **INMATE NGO:** Well probably clerical
4 duties to begin.

5 **PRESIDING COMMISSIONER BRYSON:**
6 Initially.

7 **INMATE NGO:** To start out.

8 **PRESIDING COMMISSIONER BRYSON:** Okay, all
9 right. Then you have a projected plan for the
10 next two to five years. First you would
11 continue to establish yourself as a law bidding
12 citizen with respect and integrity. Two become
13 a concerned community member about negative
14 influences that our youth face today. Three
15 help to change my community into a safe and
16 wholesome environment. How would you do that?

17 **INMATE NGO:** Well just by teaching kids
18 just you know, talking to kids and cause I'm
19 trying to organize, not try but like organize
20 station called I-Inga right which is based on
21 community for the kids. It's supported by NFL,
22 stores like that and it's well known so I would
23 like to keep in contact with them out there so
24 you know I can educate the kids about what
25 violence gang can impact on family and anyone in
26 the community that sorts.

27 **PRESIDING COMMISSIONER BRYSON:**

1 Outstanding, okay. Continue working and open a
2 savings account and finally use money saved to
3 start my own business. You also have made,
4 presented a statement here as to your overall
5 plan. Either I can read that now or you're
6 welcome to read this as part of your closing
7 statement. Would you like to read it then?

8 **INMATE NGO:** Oh no, I have a closing
9 statement.

10 **PRESIDING COMMISSIONER BRYSON:** All
11 right, would you like to read this here?

12 **INMATE NGO:** What?

13 **PRESIDING COMMISSIONER BRYSON:** This is
14 your overall plan, this is immediately following
15 the place of residences.

16 **INMATE NGO:** My overall plan is to spend
17 my time working to earn a living wage, assist my
18 mom with maintaining the household in a loving
19 good atmosphere and to work closely with my
20 assigned parole officer to ensure that my
21 understanding of all conditions of parole is
22 complete and in compliance. The evidence that I
23 asked to present above strongly show great
24 institutional program efforts. More over I have
25 made every attempt to comply with BPT to demand
26 more therapy as shown in psychological
27 consideration portion of this Memorandum. The

1 California Department of Corrections have made
2 final determination that I do not qualify for
3 nor do I require continued therapy where public
4 safety issue are concerned. I've made every
5 effort to change from the immature 19 year old I
6 was at the time of the commitment offense into
7 the mature, responsible and well reasoned 32
8 year old adult I am today. I submit to this
9 panel that my institutional programming is
10 sufficient to warrant a finding of suitability
11 at this time. In addition, I am willing to
12 volunteer submit to a continuous electronic
13 monitoring in accordance with Penal Code 9000
14 and I am willing to have my wages garnished for
15 the purpose of paying for the cost of my parole
16 during the parole period. For the all the
17 reasons stated above I urge this panel of the
18 Board of Prison Terms to make a unanimous
19 finding that I am no longer would pose an
20 unreasonable risk of danger to the public if
21 paroled at this time. Find me suitable for
22 parole and set a release date in accordance with
23 applicable regulation regarding the length of
24 time I may have yet to serve.

25 PRESIDING COMMISSIONER BRYSON: Thank
26 you.

27 INMATE NGO: Thank you for your time and

1 consideration.

2 **PRESIDING COMMISSIONER BRYSON:** All
3 right, let's go to your support letters.

4 **INMATE NGO:** Okay.

5 **PRESIDING COMMISSIONER BRYSON:** And I
6 believe this even more updated than our board
7 packet so I'll just operate off of this
8 document. Counsel do you concur?

9 **ATTORNEY RUTLEDGE:** Yes.

10 **PRESIDING COMMISSIONER BRYSON:** All right
11 and I'm just going to elude to them, frankly
12 there's quite a few as you know, and so we
13 actually, I have read most all of them. I
14 believe the other Commissioner has also and we
15 will be going through them in our deliberations
16 extensively but you have a letter of support
17 from Empire Lighting from Calvin Ung U-N-G Ung
18 and is this your uncle?

19 **INMATE NGO:** My uncle.

20 **PRESIDING COMMISSIONER BRYSON:** Okay, and
21 this is dated June 21st, 2005.

22 **INMATE NGO:** Correct.

23 **PRESIDING COMMISSIONER BRYSON:** And he is
24 totally supportive of your release. He says
25 that I am the Chinese Restaurant and lighting
26 retail business, he mentions both of those.
27 Between these two businesses I have about 25

35

1 employees. At any time I am always will to
2 offer a job position that is suitable for Sieu.
3 All right, he also references other, your
4 siblings, you mom, your other uncles, aunts and
5 cousins who in aggregate provide support and
6 care for you. Then we have a letter, one
7 moment, from Donald G. Rubright R-U-B-R-I-G-H-T
8 the Senior Deputy Public Defender of Orange
9 County, this letter is dated June 23rd, 2005. I
10 represented Mr. Ngo in the case that sent him to
11 prison. I've been a criminal defense lawyer for
12 almost 30 years and I represented over 40
13 persons accused of homicide. I do not see my
14 clients through rose colored glasses however the
15 circumstances of Sieu's case are unusual enough
16 that I feel compelled to make a statement on his
17 behalf. I am going to read this in it's
18 entirety because I think it's worth reading. At
19 the time I represented him, Sieu was a very
20 likeable young man with a minor criminal record.
21 To my recollection he had no convictions for any
22 crimes of violence. The incident in question
23 was very different from the typical "gangs case"
24 and the facts are worth sketching for your
25 review. Sieu and his friends were a want to be
26 type gang who really did not have a significant
27 history or established turf in Orange County.

26

1 On the day of the incident, some of Sieu's
2 friends by chance went to the McDonalds which
3 was near Fullerton High School in Northern
4 Orange County. Sieu was not present at the
5 time. One of Sieu's friends got in a staring
6 match with the decedent and some of his friends
7 who were members of "Toker Town" T-O-K-E-R a
8 long established Hispanic gang in Fullerton.
9 Essentially the Toker Town group told Sieu's
10 friends that they were not welcome in Fullerton
11 where some of them already lived and they should
12 get out of town. Angered by this Sieu's friends
13 decided to confront the decedents group after
14 school got out that day. Sieu was called to
15 help out in case they should be out numbered.
16 There group waited after school and confronted
17 the decedent and one of his friends about two
18 blocks south of Fullerton High School, not on
19 school grounds. From all appearances this was
20 intended to be a fist fight. Sieu and the
21 friends that had been in the stare down
22 approached the decedent and another young who
23 were walking on the sidewalk. A fist fight is
24 how it started, however the decedent's friend
25 fled just after the punching began and that left
26 Sieu and his friend fighting the decedent who
27 was significantly larger than either of them.

37

1 Of course this wasn't fair but nothing at this
2 point suggested that this was intended to be a
3 homicide. While the first fight was ongoing a
4 third member of the group Sieu was part of ran
5 forward to the scene. While the fight was still
6 in progress he reached around Sieu and shot the
7 decedent killing him and narrowly missing Sieu.
8 Sieu and his group then fled ultimately being
9 arrested out of state. Evidence was received to
10 show that Sieu and his friends knew that a gun
11 was in the car. However there was no evidence
12 to show that there was a plan to use it. Based
13 upon the theory of foreseeable consequences,
14 Sieu and several co-defendants were convicted or
15 plead guilty to the murder. The following is
16 underlined, Sieu was not the shooter and no
17 evidence suggested to show that he suggested,
18 encouraged or aided or abetted the shooting in
19 any way. After the shooting Sieu angrily
20 confronted the shooter demanding to know why he
21 brought out the gun and asserting that he, Sieu,
22 didn't know the gun was going to be used. In
23 summary this was not a drive by or similar gang
24 crime where everyone knew that legitimately
25 should have know that death or serious bodily
26 injury was intended. On the contrary this
27 appeared to be an impulsive act by one member of

30

1 the group which due to the rest of the
2 circumstances swept all of them away by
3 derivative liability. I'm not suggesting that
4 Sieu and the other non shooters bear no
5 responsibility for the tragic outcome but for
6 the fight of course no shooting would have taken
7 place. However I would submit that the
8 circumstances here are significantly mitigated
9 when considered against other convictions of
10 this type. Assuming that Sieu's performance
11 within the Department of Corrections has been
12 positive I would urge his parole at the earliest
13 possible time. Then we have a letter from Chi
14 Phong Ngo of June 30th, 2005, that's C-H-I P-H-
15 O-N-G N-G-O and from your brother. According to
16 the productive things you've done in prison and
17 there willing to help by providing housing,
18 financial aid, job hunt and any other assistance
19 he may need to promote a better life. Now we
20 have next a letter of July 14th, 2005 from okay,
21 Thanh?

22 INMATE NGO: Thanh.

23 PRESIDING COMMISSIONER BRYSON: Thanh.

24 INMATE NGO: My sister.

25 PRESIDING COMMISSIONER BRYSON: That's T-
26 H-A-N-H T N-G-O yes she's your older sister,
27 Sieu was the most down to earth, caring and kind

1 person. And then she also is offering support,
2 our families have arranged for his support once
3 released. My husband's store number, she gives
4 that number, in Anaheim, her husband is Raymond.

5 **INMATE NGO:** Right.

6 **PRESIDING COMMISSIONER BRYSON:** Raymond's
7 mom and dad have offered him work if he wishes
8 to work there. Housing would not be a problem.
9 The housing indicated would be located in
10 Placentia and you also had indicated that. Then
11 we have a letter dated June 30th, 2005 from is
12 that Duck Phan Ngo?

13 **INMATE NGO:** Duck Phan Ngo.

14 **PRESIDING COMMISSIONER BRYSON:** Duck Phan
15 Ngo, a brother who gives you general support.
16 Says I work for Kaiser Permanente as a help desk
17 technician. I am willing to provide Sieu with
18 any support, financial or emotional in his
19 transition into society as an obedient citizen.
20 Then July 19th, 2005 from Connie Hua.

21 **INMATE NGO:** Hua.

22 **PRESIDING COMMISSIONER BRYSON:** All
23 right, H-U-A and she's your cousin and has known
24 you since childhood. She reviews your
25 accomplishments, doing all that he can to
26 improve his life, full support, I can offer
27 financial help, advice and encouragement and she

1 offers her family as well. My father can offer
2 him a job at his restaurant. Is that one of the
3 restaurants that you referenced?

4 INMATE NGO: Yes, a few of my uncles own
5 restaurants so I can work at any one of them.

6 PRESIDING COMMISSIONER BRYSON: I see,
7 all right. Then we have a letter of March 22nd,
8 2004 from Calvin Ung?

9 INMATE NGO: Correct, my uncle again.

10 PRESIDING COMMISSIONER BRYSON: Okay and
11 then we have a letter of May 22nd, 2004 from
12 Phang Hung Ngo?

13 INMATE NGO: My mom.

14 PRESIDING COMMISSIONER BRYSON: Okay.

15 ATTORNEY RUTLEDGE: These are the letters
16 you brought for your last hearing?

17 PRESIDING COMMISSIONER BRYSON: These go
18 back to the last letters.

19 INMATE NGO: These were my last letters.

20 PRESIDING COMMISSIONER BRYSON: We will
21 take note of that, there are quite a few of
22 them, probably a dozen of them I would say
23 attached. Okay and then earlier letters beyond
24 that. All right this is a very extensive
25 comprehensive support file. All right do you
26 have anything further then because I think this
27 is quite comprehensive at this point.

41

1 **INMATE NGO:** No, that should cover it.

2 **PRESIDING COMMISSIONER BRYSON:** We will
3 be reviewing this even further. We have sent
4 out 3042 notices, those notices go to agencies
5 having a direct interest in your case. We have
6 a representative from the Orange County District
7 Attorney's Office present who will have the
8 opportunity to make a statement regarding parole
9 suitability prior to the conclusion of this
10 hearing. First Commissioner do you have any
11 questions for the inmate at this time?

12 **DEPUTY COMMISSIONER FILANGERI:** No thank
13 you.

14 **PRESIDING COMMISSIONER BRYSON:** All
15 right, Mr. Crofoot do you have any questions of
16 the inmate?

17 **DEPUTY DISTRICT ATTORNEY CROFOOT:** Thank
18 you, I have -- the reports indicate that the
19 inmate has multiple tattoos, I see specifically
20 referenced a tiger on the chest. Is that tiger,
21 does that have significance with the membership
22 into the Tiger Mafia?

23 **INMATE NGO:** No Sir.

24 **DEPUTY DISTRICT ATTORNEY CROFOOT:** What
25 is the significance of the tiger.

26 **INMATE NGO:** The tiger was just for, it
27 was for Fullerton Boyz you know we all had the

42

1 same tiger but all different, all five of us.

2 It's not for Tiger Mafia or nothing.

3 **DEPUTY DISTRICT ATTORNEY CROFOOT:** Okay

4 and the Fullerton Boyz is a gang as well is that
5 correct?

6 **INMATE NGO:** It's more like a want to be,
7 there are only five of us, we just friends.

8 Nothing more can say to change it.

9 **DEPUTY DISTRICT ATTORNEY CROFOOT:** The
10 probation report indicates a tattoo Wong Lee
11 under the left arm, what is the significance of
12 that tattoo?

13 **INMATE NGO:** That is my ex-girlfriend's
14 name that's all.

15 **DEPUTY DISTRICT ATTORNEY CROFOOT:** And
16 does the inmate have any other tattoos other
17 than those two?

18 **INMATE NGO:** That one no.

19 **DEPUTY DISTRICT ATTORNEY CROFOOT:** No.

20 **INMATE NGO:** That's all I have.

21 **PRESIDING COMMISSIONER BRYSON:** You don't
22 have any other tattoos is that correct?

23 **INMATE NGO:** Correct.

24 **PRESIDING COMMISSIONER BRYSON:** All
25 right.

26 **DEPUTY DISTRICT ATTORNEY CROFOOT:** Was
27 the inmate attending college at the time of this

43

1 crime?

2 INMATE NGO: Yes I was, I was attending
3 at Pasadena City College..

4 DEPUTY DISTRICT ATTORNEY CROFOOT: And
5 was this --

6 DEPUTY COMMISSIONER FILANGERI: This is
7 side two of the tape recording of the hearing
8 transcript for Mr. Sieu Ngo, last name spelled
9 N-G-O J-07024. Sorry for the interruption.

10 DEPUTY DISTRICT ATTORNEY CROFOOT: Thank
11 you. The car that was used on the day of the
12 crime, was that the inmate's car?

13 INMATE NGO: No it wasn't..

14 DEPUTY DISTRICT ATTORNEY CROFOOT: Whose
15 car was that?

16 INMATE NGO: I think it belonged to Jimmy
17 Dao.

18 DEPUTY DISTRICT ATTORNEY CROFOOT: And
19 that car was later burned is that correct?

20 INMATE NGO: Correct Sir.

21 DEPUTY DISTRICT ATTORNEY CROFOOT: All
22 right and what were the circumstances of burning
23 that car?

24 INMATE NGO: My friend wanted to get rid
25 of it so when we were leaving the state of
26 California we didn't want to be followed so they
27 decided to burn it.

1 PRESIDING COMMISSIONER BRYSON: Where did
2 you do that?

3 INMATE NGO: At that point I wasn't even
4 there but I knew what they did when they told me
5 but it was in somewhere, I think it was, I'm not
6 sure but I think it was near some beach or
7 something. I don't know exactly where though
8 because I wasn't there.

9 DEPUTY DISTRICT ATTORNEY CROFOOT: Where
10 did the murder weapon come from?

11 INMATE NGO: Now I know that Asat Chan
12 who live in Washington I think he stole a gun
13 and brought it to California. That's the only
14 thing I know.

15 DEPUTY DISTRICT ATTORNEY CROFOOT: Was
16 that person involved in this crime?

17 INMATE NGO: Yes he was.

18 DEPUTY DISTRICT ATTORNEY CROFOOT: And
19 did he return to Washington with you?

20 INMATE NGO: Yes he was -- when we were
21 arrested he was arrested with me and Jimmy Dao
22 at that time.

23 DEPUTY DISTRICT ATTORNEY CROFOOT: And
24 when you were arrested you still had the murder
25 weapon is that correct?

26 INMATE NGO: Correct.

27 DEPUTY DISTRICT ATTORNEY CROFOOT: Thank

45

1 you I have no further questions.

2 PRESIDING COMMISSIONER BRYSON: All
3 right, Counselor do you have questions for the
4 inmate?

5 ATTORNEY RUTLEDGE: Yeah I do. Clearly
6 you've been busy since you've been here.

7 INMATE NGO: Yes I have.

8 ATTORNEY RUTLEDGE: And when you were
9 going to college, you were going to college when
10 this happened and you were?

11 INMATE NGO: Just visiting them.

12 ATTORNEY RUTLEDGE: Okay that's what I
13 was getting at. So what was your social life
14 after -- did you move to Pasadena at that time
15 or were you just going to college there?

16 INMATE NGO: I moved down there you know
17 back to LA because I want to straighten out my
18 life you know, get away from so called gang but
19 I was trying to straighten out, I had a steady
20 girlfriend, I was going back to college trying
21 to straighten out my life. I hadn't seen my co-
22 defendant in a little over a year when, before
23 this happened you know so that -- they called me
24 up one day you know to come visit them and one
25 thing led to another, this is what happened.

26 ATTORNEY RUTLEDGE: And what do you think
27 -- were you able to ever apologize to the

40

1 victim's mother or family?

2 **INMATE NGO:** At the time I tried to
3 during court but I guess she didn't want to hear
4 it so she walked out on me. I made an attempt
5 but I wasn't successful at that though because
6 she left the court.

7 **ATTORNEY RUTLEDGE:** All right, and how do
8 you think the loss of this young man affected
9 his mother and he had other siblings, how did
10 that affect them?

11 **INMATE NGO:** There is really no word can
12 express how truly and deeply sorry I am for the
13 victim's family because the pain and suffering a
14 mother goes through is incomprehensible because
15 it just affect the family and it just everyone
16 that's involved in this crime. I know this
17 because you know I lost loved one myself so I
18 know, I can emphasize what the family is going
19 through, friends, I mean just everyone, the
20 community that knows Angel Gonzales you know but
21 at this time I can't change what happened you
22 know. I wish I could make the pain go away but
23 I can't, I'm only human. But I am truly, truly
24 sorry for what happened to Angel. It was never
25 my intention to take his life. It thought it
26 was going to be a fist fight and at a young age
27 I never in my wildest dream think something like

1 this was going to happen. So I take full
2 responsibility for my action, there's no doubt.
3 I deserve to be punished you know, I'm willing
4 to do my time for this so all I can say at this
5 time is I am truly, truly sorry for what I have
6 done to the Gonzales family. I know what each
7 and every day it's like for them without there
8 son so that's all I have to say.

9 **ATTORNEY RUTLEDGE:** Have you been in any
10 fights since you've been in the institution?

11 **INMATE NGO:** No I haven't.. I been
12 disciplinary free.

13 **ATTORNEY RUTLEDGE:** All right, how do you
14 stay -- have you managed to stay away and I
15 wanted to ask you to have you been involved with
16 any gangs in the prison?

17 **INMATE NGO:** No I haven't.

18 **ATTORNEY RUTLEDGE:** How have you managed
19 to keep yourself from the gangs and not involve
20 yourself in any violence?

21 **INMATE NGO:** Knowing what I know today
22 about what impact a gang can have on people. I
23 have grown so I know to change my behavior for
24 the better.

25 **ATTORNEY RUTLEDGE:** You mentioned, did
26 you recently loose a co-worker here at the
27 prison?

1 INMATE NGO: Yes I have.

2 ATTORNEY RUTLEDGE: And how did that
3 impact your life?

4 INMATE NGO: Realize life is short you
5 know and anything can happen. I mean he was a
6 good man, older individual. His name was
7 Nicholas you know. The last thing I said to him
8 when you know I see you out in the yard. I gave
9 him a hug but when I came back from visit that's
10 the first thing I heard was that he passed away
11 and I just couldn't believe it you know like
12 something like this happens so short you know.
13 Life is so unpredictable.

14 ATTORNEY RUTLEDGE: No further questions
15 for Mr. Ngo.

16 PRESIDING COMMISSIONER BRYSON: I have a
17 couple of questions. We didn't really discuss
18 and I would like to know what your history has
19 been -- have you trafficked drugs?

20 INMATE NGO: No I haven't Ma'am.

21 PRESIDING COMMISSIONER BRYSON: And how
22 was it that you were associated with cocaine at
23 one point in your life?

24 INMATE NGO: Well at that point you know
25 I tried it, a friend introduced me to it so I
26 tried it and I bought three piece of rock
27 cocaine as I was going home I was pulled over by

1 the police, got arrested.

2 PRESIDING COMMISSIONER BRYSON: And
3 that's your whole history with cocaine?

4 INMATE NGO: Yeah, pretty much.

5 PRESIDING COMMISSIONER BRYSON: Okay, how
6 about alcohol?

7 INMATE NGO: I don't drink alcohol, I'm
8 allergic to alcohol.

9 PRESIDING COMMISSIONER BRYSON: Okay.

10 INMATE NGO: I break out in hives. Tried
11 it though but that's how I knew I was allergic
12 to it.

13 PRESIDING COMMISSIONER BRYSON: Okay well
14 that answers those questions. Thank you. All
15 right, I'd like to invite the District Attorney
16 Mr. Crofoot to make a closing statement at this
17 time.

18 DEPUTY DISTRICT ATTORNEY CROFOOT: Thank
19 you. At the time of this offense he was on
20 diversion for possession for that rock cocaine.
21 He was a gang member, Don Rubright stated in his
22 letter that this gang had not established a
23 territory. The fact is Asian gangs generally
24 are not territorial as opposed to Spanish gangs
25 which are. So that is meaningless, there in a
26 gang he was in the Tiger Mafia previously to
27 Fullerton Boyz. Apparently in the gang

1 significantly in that he chose to have his chest
2 tattooed with a tiger relating to that gang
3 affiliation. One of the correctional counselors
4 indicated that he was immature at the time of
5 the crime and easily influenced by peers.
6 Actually he was 19 years old at that time, he
7 was out of high school, he was in his first year
8 of college and in his story had moved away from
9 the gang influence. However at the request of
10 the other gang members he did return to
11 Fullerton, he entered into a, there was an
12 argument at McDonalds between the Asian gang
13 members and the Fullerton Toker's Gang, a
14 Mexican gang. That was a verbal confrontation.
15 They left, they the defendant, the inmate and
16 his cohorts left and went to another location
17 where they obtained a gun, returned to the
18 location where the 15 year old victim was
19 attending school and there they waited for the
20 victim, lay and wait for him and when the victim
21 came out the three of them attacked that victim
22 and ultimately the victim was shot in the back.
23 They fled to Washington, saw fit to destroy the
24 vehicle, burn the vehicle which might have
25 identified them. However they also chose to
26 hang onto that 22 handgun which was the murder
27 weapon and they possessed that at the time they

1 were arrested. This inmate denied knowledge of
2 the gun until it was in the vehicle, until it
3 was in the vehicle is the key because this is
4 pre-shooting. He knew of the gun prior to going
5 to lay and wait for the 15 year old victim. He
6 indicates that they didn't intend to kill the
7 victim, they only intended to beat him up. So
8 they chose to bring a handgun to a fist fight.
9 The inmate indicates that they had the gun for
10 protection if someone else had a gun. If
11 someone else chose, if they thought that someone
12 else had a gun and they bring a gun, it's
13 inevitable that there is going to be a shooting.
14 If he wanted to stay out of this he had plenty
15 of opportunity to walk away when all they had
16 previous to that was a verbal altercation. The
17 reason for the shooting was inexplicable, it was
18 a minor affront during this argument, I'm sorry,
19 the victim said get out of town and that's the
20 basis for this killing. In 1990, two years
21 prior to this, there was a similar cowardly
22 attack by this inmate and others. There were --

23 **ATTORNEY RUTLEDGE:** I would object to
24 that, do we have a police report for that?

25 **DEPUTY DISTRICT ATTORNEY CROFOOT:** It's
26 in the probation report.

27 **ATTORNEY RUTLEDGE:** But they couldn't --

1 my understanding is that they couldn't confirm
2 it, they couldn't reach the victim.

3 **DEPUTY DISTRICT ATTORNEY CROFOOT:** The
4 police report is right there, it's on page ten
5 of the probation report.

6 **ATTORNEY RUTLEDGE:** I would object to it
7 unless they can produce, it's like triple hear
8 say of actual police report.

9 **PRESIDING COMMISSIONER BRYSON:** Okay,
10 that's over ruled, I won't be looking at all
11 that information.

12 **DEPUTY DISTRICT ATTORNEY CROFOOT:** It was
13 a similar attack, the victim was confronted by
14 three, this inmate and two others. He was
15 struck and this inmate was the second person to
16 strike that victim when the victim went down he
17 was kicked and punched by the three of them. So
18 this is not, this one shooting is a culmination
19 of what was going to happen and what was going
20 to happen eventually and it did and it happened
21 in 1992. The inmate is programming but he was
22 programming at the time that he got involved in
23 this gang activity. He was attending college at
24 that time, he had moved from the area at that
25 time, it appeared that he was moving ahead as it
26 appears here that he's moving ahead. But he
27 chose to go back and get involved in this gang

EB

1 activity again and that's why he's here. And I
2 think that he has served his MAPD was less than
3 two years ago, one and a half years ago. I
4 think that he is - I'm sorry two and a half
5 years ago. And I don't think that he has served
6 enough time and I would ask that the board not
7 grant him a date at this time. Thank you.

8 **PRESIDING COMMISSIONER BRYSON:** Thank
9 you. All right counsel I would like to invite
10 you to make a closing statement.

11 **ATTORNEY RUTLEDGE:** Thank you. Well I
12 think that the most important thing that I would
13 comment that the people shared with us was that
14 this happened in 1992. I wouldn't consider Mr.
15 Ngo programming when he was on, he had a
16 diversion charge at that time. I think again
17 that he had just been an adult for about one
18 year. I think he's discussed openly with the
19 panel his -- and if you have any other questions
20 about what his motivation was to be involved
21 with these people or what they were involved in
22 feel free to ask him again but I think he has
23 pretty much answered that. I commented to him
24 you know, it's a miracle that most teenagers
25 survive the teen years because there is such a
26 high possibility of them to get involved in
27 stupid things like this. This was a very

1 unfortunate situation and you know a clear
2 picture of an ignorant teenager thinking let's
3 just go get in a fight not appreciating at the
4 time that any type of violence has a potential
5 for something serious. I think he clearly sees
6 that now, in fact he noted to the board that he
7 would like to share that with other people at
8 risk and I think that is, we still have young
9 people that are out there at risk for thinking
10 that they are just going to be beating up people
11 and not truly appreciating and I think there's
12 evidence that at that age your -- everything is
13 not together that's why teenagers act like there
14 from another planet. But I think there is a
15 truly different person here today at 32. He's
16 been down for this time. There hasn't been any
17 evidence of any drug use or gang affiliation. I
18 believe that some of these co-defendants are
19 housed here at CTF. Is that correct?

20 **INMATE NGO:** Correct.

21 **ATTORNEY RUTLEDGE:** And there has been no
22 further action. I think this did -- which I
23 would say I would speculate that this was an
24 isolated incident for these boys. I think, I
25 don't think that that behavior marked Mr. Ngo's
26 life long traits as a person. I think it was
27 sort of an immature wrong. I mean I am not

55

1 going to disagree with the people, it was
2 clearly wrong, clearly had the potential for
3 what happened. And I think we have all been
4 teenagers, we know how these kids don't think
5 these things through and it's very serious and
6 it had a tremendous impact on the community and
7 on this family and I believe that Mr. Ngo also
8 is in touch with that. That said the amount of
9 time that he's served, he has served 13 years.
10 Is it 13 or 14?

11 **INMATE NGO:** About 13, almost 13.

12 **ATTORNEY RUTLEDGE:** Almost 13 years and
13 he came into the system when he was quite a
14 young man so in his twenties. We all can
15 remember the twenties. That's a significant
16 time of your life. It's almost like if you
17 lose your twenties you've lost half your
18 thirties and your forties because that is such a
19 prime time. So I would like the panel to when
20 you think about the amount of time he's served
21 think about the time of his life when everyone's
22 going to college or discovering life. He lost
23 that whole decade, I mean he gave it up, I
24 shouldn't say it was taken away from him, he
25 made that decision to get involved in that
26 behavior and gave it up but I do believe that's
27 stronger punishment had he been older it would

50

1 have been a little bit different. He's lost, he
2 gave up the prime years of his life in exchange
3 for this act. He had no juvenile record, his
4 stable social history is all there. All the
5 letters written by his family and also all the
6 reports in the file indicate that he had good
7 family ties, his family had there own business,
8 they were highly productive members of society.
9 And as far as remorse goes I think his comments
10 speak for themselves and also what he has
11 included in his Memorandum, I would incorporate
12 that into the remorse. And his psychological
13 reports also underlie his true feelings of
14 remorse for what he's done. And the motivation
15 for the crime, I mean what can you say about
16 that. I'm not sure -- there are rare
17 circumstances when there is any way that you can
18 explain away this type of situation. Other than
19 the fact again that you've got a bunch of
20 immature teenagers and I would note that when we
21 talk about gangs its one thing if one of us says
22 get out of town but when a gang member says
23 that, its almost like a threat you know. If
24 there affiliated with dangerous people and they
25 tell other people to get out of town that should
26 put them on notice that something could happen
27 if they don't get out of town. Mr. Ngo had one

57

1 prior incident with his diversion which he up
2 until the commitment offense he was completing
3 that. His maturity level I think is quite
4 significant. I think its obvious he has spent
5 this time in prison because he's a little bit
6 more mature than we would expect at that age but
7 that's probably what prison does to people. And
8 his understanding and plans for the future, that
9 goes without saying, he's submitted a Memorandum
10 that's covered every applicable suitability
11 factor as far as skills, he's got three vocs,
12 he's got -- he had been in college, he had
13 completed high school so he does have an
14 aptitude for academics. He's got the highest
15 TAB score and he has jobs lined up, family
16 support and interesting in his file to is he has
17 been giving money to organizations that are
18 feeding children. I don't know if you noted,
19 there was a letter thanking him for that so he
20 seems to have a community, a sense of community.
21 His institutional behavior is exceptional.
22 Nothing violent, no substance abuse, nothing
23 again to show that he has any motivation to
24 continue that, the path that he was on when he
25 entered the CDC. There is no documentation that
26 he's ever disrespected inmates or staff, he has
27 marketable skills, he has many years of self

50

1 help, he's fully prepared really for life among
2 free society as a productive citizen. I think
3 he has covered every possible basis that is
4 necessary for his integration and his behavior
5 here indicates an enhanced ability to actually
6 function within the law. I mean he knows he is
7 the know what can happen when you aren't
8 following the norms of society. And while he
9 has been here he has lost his father and been
10 able to get more of an idea of the impact that
11 the death of Mr. Gonzales had on his family
12 which he expressed here today. All those things
13 considered I would ask the board to please give
14 him a parole date today. Thank you.

15 **PRESIDING COMMISSIONER BRYSON:** Thank
16 you. Sir I would like to give you an
17 opportunity to make a final statement to this
18 panel regarding your suitability for parole.

19 **INMATE NGO:** All right. I would like to
20 read, I wrote this. First and for most there is
21 no adequate amount of words in the universe
22 which can express the truly deeply sorry I am to
23 Gonzales family for all the pain and suffering I
24 caused them and everyone else who was affected
25 by Angels death. In hindsight I wish I could
26 have changed what happened on that tragic day
27 but the truth is I really did not know what was

31

1 about to happen that very instant that took
2 Angel's life. At the time I honestly believe I
3 was getting into a fist fight and nothing more..
4 I did not take Angel's life, it was never my
5 intention that is such a tragic incident would
6 occur. Again I was there for a fist fight,
7 nothing I say or do at this point will ever
8 change what happened on that tragic day. All I
9 can do on my part is to accept full
10 responsibility for my action alone. I hope and
11 pray that someday the Gonzales family will find
12 it in there hearts to forgive me for my actions.
13 We all have made mistakes at some point in our
14 lives, some more than others but as individual
15 how we choose to learn, grow and change our
16 behavior does set us apart from the one who
17 don't. Today as I sit in front of you I am no
18 longer the young stupid naive 19 year old back
19 then but as a good decent 32 year old mature
20 adult who is intelligent enough to know the
21 difference between right and wrong. Who is able
22 to think things through before reacting to any
23 situation and responsible for any actions that I
24 may take here on out. I know in my heart and
25 soul that I am a good decent person who as a
26 young man made some very poor choices which I
27 am truly sorry for. There is not a single day

60

1 that goes by that I don't think about what
2 happened to Angel and what his family is going
3 through. Everyday I wake up in here, it's a
4 constant reminder of that tragic day. I deserve
5 to be punished for my actions but I believe I
6 have served more than enough time for my
7 actions. In closing I understand the difficulty
8 of your task as Commissioner in determining ones
9 suitability with regard to public safety. All
10 that I ask of you is please don't judge me for
11 one of my unchanging aspects of my past conduct
12 to find who I am today. But look at all that I
13 have accomplished during my incarceration. With
14 absolute certainty I know I am a better person
15 today than I was when I committed this
16 unfortunate offense. I know I will never come
17 back in prison and I know I can be a law,
18 productive law abiding citizen if you would only
19 give me a second chance. Should you find me
20 suitable here today the rules that govern this
21 panel in setting my term of confinement are set
22 forth in California Code of Regulation title 15
23 division two section 2403, the conduct most
24 closely related to the crime I've committed is
25 category A section three. Which has a minimum
26 term of 17 years medium term of 18 years and a
27 maximum term of 19 years. I respectfully

ld

1 request that this panel set my appropriate term
2 of 17, 18 or 19 years. And please, please give
3 me a second chance. I know I will be a law
4 bidding citizen. I know I can make it out
5 there. I won't be a statistic that comes back
6 in here. I will never, never come back in to
7 prison. I have a family that's waiting for me
8 out there. So please grant me a date today.
9 Thank you for your time today.

10 PRESIDING COMMISSIONER BRYSON: Thank you
11 for your remarks. We will now recess for
12 deliberations the time is 11:11 A.M.

13 R E C E S S

14 --oOo--

15

16

17

18

19

20

21

22

23

24

25

26

27

62

1 CALIFORNIA BOARD OF PAROLE HEARINGS

2 D E C I S I O N

3 DEPUTY COMMISSIONER FILANGERI: Okay
4 we're back on record.

5 PRESIDING COMMISSIONER BRYSON: All
6 right, the time is 11:58 A.M. in the matter of
7 Sieu Phong Ngo.

8 DEPUTY COMMISSIONER FILANGERI: Did
9 somebody tell the DA?

10 PRESIDING COMMISSIONER BRYSON: Oh my
11 apologies. We'll start is all again. Why don't
12 you please find the DA.

13 ATTORNEY RUTLEDGE: He went home.

14 DEPUTY COMMISSIONER FILANGERI: We're on
15 record.

16 PRESIDING COMMISSIONER BRYSON: The time
17 is 11:59 in the matter of Sieu Phong Ngo. Sir
18 the panel reviewed all information received from
19 the public and you and relied on the following
20 circumstances in concluding that you are not
21 suitable for and would pose an unreasonable risk
22 of danger to society or a threat to public
23 safety if released from prison. The offense was
24 carried out in an especially cruel and callous
25 manner in that you attacked and beat a 15 year
26 old male, Angel Gonzales who was ultimately shot
27 SIEU NGO J-07024 DECISION PAGE 1 2/8/06

63

1 in the back and died at the scene. The offense
2 was carried out in a dispassionate and
3 calculated manner in that it was a confrontation
4 between gang members preplanned by lying in wait
5 for the victim as he walked home. The offense
6 was carried out in a manner demonstrating
7 exceptionally callous disregard for human
8 suffering, disregard for public safety in that
9 it occurred near a school and there was a clear
10 opportunity for you to cease but you continued.
11 Despite some prior record of involvement with
12 cocaine this panel recognizes and submits that
13 you have a relatively criminal free background
14 and you are to be commended for that. And you
15 have a history of stable relationships including
16 your family support. We do not have evidence
17 that you have a long history with established
18 gangs and so we do not point to that in terms or
19 your history of relationships. And it will be
20 further discussed you have presented to us a
21 history of strong stable social support. As to
22 your institutional behavior you have programmed
23 commendably, your education includes 41 units
24 towards you AA Degree and continuing involvement
25 with college enrollment including your current
26 independent study through Coast Line Community
27 SIEU NGO J-07024 DECISION PAGE 2 2/8/06

64

1 College. We also have read into the record a
2 very reputable list of vocational achievements
3 including automotive refinishing and upholstery,
4 forklift operator, salesmanship and other
5 vocational work. You have participated in self
6 help and therapy, well self help consistently
7 ranging from Anger Management, the Teddy Bear
8 Drive, Feed the Children, Buddhist ordination
9 into Buddhist Studies, the Impact Program, Key
10 to Fatherhood, The Muslim Chapel, and you have
11 assisted in inmate education. As to misconduct
12 you have zero 115's, you have two minor 128A's,
13 the last in 2000 for window covering. As to
14 your psychological report, the report that is
15 dated January 23rd, 2002, the last we have by
16 Doctor Saindon S-A-I-N-D-O-N does in general
17 support release. And I quote, this man has
18 spent ten years in prison and that is at the
19 time of this psychological report, I would
20 recommend should he be paroled abstinence from
21 all alcohol or use of any controlled substance,
22 frequent monitoring for substance abuse, he
23 should be relocated so that he is near his
24 family, he should make frequent reports to his
25 parole officer concerning his vocational
26 progress and goals. And due to his families
27 SIEU NGO J-07024 DECISION PAGE 3 2/8/06

65

1 commitment to supporting him upon his release,
2 his projected level of success in the community
3 if granted a date for parole is seen at this
4 time to be better than average. You also have
5 made outstanding parole plans. You have viable
6 residential plans in the last county of legal
7 residence and I refer to the record for the
8 documentation that we have received. You also
9 have acceptable employment plans with
10 established businesses owned by your relatives
11 who are assuring you of jobs. As to Penal Code
12 3042 responses, the responses indicate
13 opposition to a finding of parole suitability,
14 specifically by the District Attorney of Orange
15 County. In a separate decision the hearing
16 panel finds it's not reasonable to expect that
17 parole would be granted at a hearing during the
18 following two years. Specific reasons for this
19 finding are as follows. The panel reviewed all
20 information received from the public and relied
21 on the following circumstances. The offense was
22 carried out in a specially cruel and callous
23 manner in that you attacked and beat a 15 year
24 old Angel Gonzales who was ultimately shot in
25 the back and died at the scene. The offense was
26 carried out in a dispassionate and calculated
27 SIEU NGO J-07024 DECISION PAGE 4 2/8/06

66

1 manner, it was a confrontation between gang
2 members preplanned by lying in wait for the
3 victim as he walked home. The offense was
4 carried out in a manner demonstrating
5 exceptionally callous disregard for human
6 suffering. The offense risked public safety in
7 that it was conducted near a school and you had
8 a clear opportunity to cease but continued.
9 Moreover, the motive for this crime was very
10 trivial in relation to the offense. It was gang
11 activity and you told this panel "I thought I
12 was going to a fist fight", that minimizes the
13 gravity of the crime, your involvement in it and
14 there fore your insight into the gravity of this
15 crime. In denying you parole for two years this
16 panel will place the prisoner on the 2008
17 calendar for the next Subsequent Hearing. If
18 this decision is final you will not get parole,
19 the board will send you a copy of the decision.
20 It will indicate the reasons you did not get
21 paroled. If this decision is not final the
22 board will set up another hearing. You can find
23 the laws of California Code of Regulations title
24 15 section 2041. The board recommends get self
25 help, stay discipline free, get therapy, and
26 continue your educational and vocational
27 SIEU NGO J-07024 DECISION PAGE 5 2/8/06

67

1 development plus your outreach to help others.

2 Commissioner do you have anything further?

3 **DEPUTY COMMISSIONER FILANGERI:** Yeah, the
4 thing that bother's me the most is you know our
5 job is to determine whether your release would
6 pose an unreasonable risk to public safety and
7 one of the tools that we look at, one of the
8 tools that I like to try to use in that is your
9 insight into the crime. I think your contention
10 that you were going to a fist fight when you
11 somebody else was armed is hard to believe and
12 as Commissioner said it tends to minimize your
13 role. I can see where you might be motivated to
14 minimize your role. What it means to me is that
15 you haven't come to grips, you haven't developed
16 the insight that you need into the causative
17 factors of this crime and I think you should
18 look at that. Moreover you told the
19 psychiatrist that no one intended to kill the
20 victim, well even if you weren't holding the gun
21 somebody came to a fist fight with a gun and
22 what was that person's intentions. So it's hard
23 for me to get a gauge on what risk you would
24 pose to public safety when I can't feel
25 comfortable about the level of insight that
26 you've displayed. And that's what prevents me
27 **SIEU NGO J-07024 DECISION PAGE 6 2/8/06**

V8

66

1 from granting you a date. I wish you the best
2 of luck, you've been doing good work in the
3 institution, I hope you keep it up. Thank you.

4 **PRESIDING COMMISSIONER BRYSON:** Please
5 don't get discouraged, I hope you will take this
6 as a challenge and an opportunity. And that
7 concludes this hearing and the time is 12:08
8 P.M.

9 ---oOo---

10

11

12

13

14

15

16

17

18

19

20

21

22

23 **PAROLE DENIED TWO YEARS**

24 **THIS DECISION WILL BE FINAL ON:** JUN 8 2006

25 **YOU WILL BE PROMPTLY NOTIFIED, IF PRIOR TO THAT**

26 **DATE, THE DECISION IS MODIFIED.**

27 **SIEU NGO J-07024 DECISION PAGE 7 2/8/06**

69

CERTIFICATE AND
DECLARATION OF TRANSCRIBER

I, SUE GERDES, a duly designated transcriber, PETERS SHORTHAND REPORTING, do hereby declare and certify under penalty of perjury that I have transcribed tape(s) which total one in number and cover a total of pages numbered 1 - 66, and which recording was duly recorded at CORRECTIONAL TRAINING FACILITY, SOLEDAD, CALIFORNIA, in the matter of the SUBSEQUENT PAROLE CONSIDERATION HEARING OF SIEU NGO CDC NO. J-07024, ON FEBRUARY 8, 2006, and that the foregoing pages constitute a true, complete, and accurate transcription of the aforementioned tape to the best of my ability.

I hereby certify that I am a disinterested party in the above-mentioned matter and have no interest in the outcome of the hearing.

Dated February 27, 2006 at Sacramento,
California.



SUE GERDES
TRANSCRIBER
PETERS SHORTHAND REPORTING

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT B

INITIAL PAROLE CONSIDERATION HEARING

STATE OF CALIFORNIA

BOARD OF PRISON TERMS

In the matter of the Life)
Term Parole Consideration)
Hearing of:)

CDC Number J-07024

SIEU PHONG NGO)
_____)

COPY
INMATE

CORRECTIONAL TRAINING FACILITY

SOLEDAD, CALIFORNIA

MAY 13, 2002

2:20 P.M.

PANEL PRESENT:

AL ANGELE, Presiding Commissioner
ROBERT RODRIGUEZ, Deputy Commissioner

OTHERS PRESENT:

SIEU PHONG NGO, Inmate
PAT FOX, Attorney for Inmate
JAMES LAIRD, Deputy District Attorney

CORRECTIONS TO THE DECISION HAVE BEEN MADE

☒ No
☐ Yes

See Errata Sheet

Valerie Lord, Transcriber Capitol Electronic Reporting

ii

INDEX

	<u>Page</u>
Proceedings	1
Case Factors	9
Pre-Commitment Factors	15
Parole Plans	23
Post-Commitment Factors	29
Closing Statements	50
Recess	56
Decision	57
Adjournment	64
Transcriber Certification	65

--oOo--

73

1

P R O C E E D I N G S

1

2

PRESIDING COMMISSIONER ANGELE: --- hearing,

3

pronounce your last name.

4

INMATE NGO: Ngo.

5

PRESIDING COMMISSIONER ANGELE: Ngo?

6

INMATE NGO: Yes.

7

PRESIDING COMMISSIONER ANGELE: First name?

8

INMATE NGO: Sieu.

9

PRESIDING COMMISSIONER ANGELE: Sieu, okay.

10

Initial parole consideration hearing for Sieu Ngo,

11

that's N-G-O, CDC number J-John-07024. Today's

12

date Monday, May 13, 2002. The time approximately

13

2:20 p.m. We're located at CTF Soledad. Inmate

14

received February the 1st, 1994, Orange County,

15

murder second degree. Case number C-Charles

16

99109, count number one, 187 of the Penal Code.

17

Received a term of 16 years to life, with a

18

minimum eligible parole date of May the 24th,

19

2003. Mr. Ngo, this hearing's going to be

20

tape-recorded. For the purpose of voice

21

identification, each of us will state our first

22

name, last name, spelling our last name. When it

23

comes to your turn, after you spell your last

24

name, give us your CDC number. I'm going to go to

25

my left. My name is Al Angele, A-N-G-E-L-E,

26

Commissioner, Board of Prison Terms.

27

DEPUTY COMMISSIONER RODRIGUEZ: Deputy

2

1 Commissioner Rodriguez, R-O-D-R-I-G-U-E-Z, Board
2 of Prison Terms.

3 DEPUTY DISTRICT ATTORNEY LAIRD: James
4 Laird, Orange County District Attorney's office,
5 L-A-I-R-D.

6 ATTORNEY FOX: Pat Fox, F-O-X, attorney for
7 Mr. Ngo.

8 INMATE NGO: Ngo, N-G-O. First name,
9 S-I-E-U. Middle name Phong, P-H-O-N-G.

10 DEPUTY COMMISSIONER RODRIGUEZ: Prison
11 number?

12 INMATE NGO: J-07024.

13 DEPUTY COMMISSIONER RODRIGUEZ: You can
14 bring that closer to you.

15 PRESIDING COMMISSIONER ANGELE: Let the
16 record reflect that there are also two
17 correctional officers in the room for security
18 purposes and will not be participating in today's
19 hearing. The hearing is being conducted pursuant
20 to Penal Code Sections 3041 and 3042 and the rules
21 and regulations of the Board of Prison Terms
22 governing parole consideration hearings for life
23 prisoners. The purpose of today's hearing is to
24 consider your suitability for parole. We'll
25 consider the crimes you were committed for, your
26 prior criminal and social history and your
27 behavior and programming since your commitment.

3

1 We'll reach a decision today and inform you
2 whether or not we find you suitable for parole and
3 the reasons for our decision. If we find you
4 suitable for parole, the length of your
5 confinement will be explained to you. Before we
6 go any further, I want to instruct you, Mr. Ngo,
7 that if you do not get a date today, this is your
8 initial hearing and this will form the foundation
9 of all future hearings, okay. In saying that, we
10 ask that you be totally truthful with us. Nothing
11 you say today is going to change the outcome of
12 your court case, okay. If you tell us things
13 today that are not true, I'm sure somewhere down
14 the line it's going to catch up to you and you're
15 going to wind up finding yourself with a situation
16 where nobody knows what the story is, the right
17 story. So, we need to have the total truth today,
18 okay. I'm going to explain to you the way the
19 system is going to work. We're going to have two
20 different segments. I'm going to discuss with you
21 the crime, your prior criminal and social history.
22 I'm going to discuss with you your parole plans,
23 any letters of support or opposition that are in
24 the record. And Commissioner Rodriguez will then
25 discuss with you your programming since your
26 commitment, your psychological evaluation, your
27 counselor's report and he'll also discuss with you

76

1 any sort of discipline that you may have had.
2 Once that is conducted, we will then have the
3 ability to ask you questions, as will the District
4 Attorney and your attorney. After that, the
5 District Attorney, your attorney and yourself,
6 will have the opportunity to make a closing
7 statement. Once the closing statements are done,
8 we'll recess, clear the room and deliberate. When
9 we have completed our deliberations, we'll resume
10 the hearing and announce our decision. The Board
11 of Prison Terms' rules and the law state a parole
12 date shall be denied if your release would pose an
13 unreasonable risk of danger to others. Do you
14 understand that?

15 **INMATE NGO:** The last part, I ---

16 **PRESIDING COMMISSIONER ANGELE:** The law
17 requires that parole would be denied if your
18 release would pose an unreasonable risk of danger
19 to others. Now you have certain rights. Those
20 rights include a timely notice of this hearing, a
21 right to review your Central file, have an Olson
22 Review, and a right to present relevant documents.
23 Have those rights been so far, Ms. Fox?

24 **ATTORNEY FOX:** Yes, they have.

25 **PRESIDING COMMISSIONER ANGELE:** You have an
26 additional right and that's to be heard by an
27 impartial Panel. Any objections to either member

5

1 of this Panel?

2 **ATTORNEY FOX:** At this time on behalf of
3 Mr. Ngo, I'd pose an objection. It's not possible
4 for Mr. Ngo to receive a fair hearing before any
5 Panel comprised of members of the Board of Prison
6 Terms as it's currently constituted. That's based
7 on their policies, practices, and procedures, as
8 well as on the practices, policies, and public
9 statements of the governor.

10 **PRESIDING COMMISSIONER ANGELE:** Can you
11 enumerate the policies and practices of this
12 particular Panel?

13 **ATTORNEY FOX:** My understanding is that when
14 a date, for instance, when a date is granted the
15 Board of Prison Terms submits to the governor a
16 list of reasons why the date should not be granted
17 after the Panel has already found the person
18 suitable. So I think there's a conflict there.
19 And just the inherent conflict of interest having
20 been appointed by the governor and answering back
21 to the governor.

22 **PRESIDING COMMISSIONER ANGELE:** First of all
23 the statement with regards to the Board of Prison
24 Terms providing the governor with a list of
25 reasons not to find the inmate suitable for parole
26 is not true. The governor has staff that reviews
27 these cases that have nothing to do with Board of

6

1 Prison Terms and it is they who present the
2 governor with reasons (inaudible) to. As far as
3 this particular Panel goes, I am an appointee of
4 the governor. I've never discussed with him my
5 appointment, nor have I discussed with him his
6 philosophy on parole dates. I have given a number
7 of parole dates in the past and will continue
8 doing that as long as I'm on this Board. And
9 there's no reason at all that I feel that I am not
10 able to give or to be fair and impartial.
11 Commissioner Rodriguez.

12 **DEPUTY COMMISSIONER RODRIGUEZ:** I'm a civil
13 servant and I've always been known to be fair and
14 impartial as well as I've been on panels with
15 Commissioner Angele where we have given a number
16 of dates at various prisons throughout California.

17 **PRESIDING COMMISSIONER ANGELE:** I'll
18 overrule your objection, anything else?

19 **ATTORNEY FOX:** No, that's all. Thank you.

20 **PRESIDING COMMISSIONER ANGELE:** Okay,
21 Mr. Ngo, do you have any problems at all
22 understanding or speaking the English language?

23 **INMATE NGO:** No, I don't, Sir.

24 **PRESIDING COMMISSIONER ANGELE:** Not even
25 technical words?

26 **INMATE NGO:** Maybe if you use court lingo,
27 you know, then I might have a problem.

79

1 **PRESIDING COMMISSIONER ANGELE:** Your
2 attorney can probably help you with that. So you
3 have no problem at all ---

4 **INMATE NGO:** No problem.

5 **PRESIDING COMMISSIONER ANGELE:** All right.
6 I noticed that you signed BPT form 1073 on January
7 the 18th, of this year indicating that you do not
8 have a disability as defined under the Americans
9 with Disabilities Act, is that true?

10 **INMATE NGO:** Yes, it is.

11 **PRESIDING COMMISSIONER ANGELE:** And you need
12 no accommodation, correct?

13 **INMATE NGO:** Pardon?

14 **PRESIDING COMMISSIONER ANGELE:** You need no
15 accommodation?

16 **INMATE NGO:** No.

17 **PRESIDING COMMISSIONER ANGELE:** You will
18 receive a copy of our written tentative decision
19 today. That decision becomes final within 120
20 days. You'll then receive a copy of the decision
21 and a copy of the transcript and you'll have 90
22 days from the effective date to appeal if you so
23 desire. You are not required to discuss your
24 offense with us. You are not required to admit
25 your offense. However, this Panel does accept as
26 true the findings of the court. Do you understand
27 what that means?

1 INMATE NGO: The findings of the court?

2 PRESIDING COMMISSIONER ANGELE: We accept as
3 true the findings of the court. Do you understand
4 what that means?

5 INMATE NGO: What the court found?

6 PRESIDING COMMISSIONER ANGELE: Yes.

7 INMATE NGO: Yes.

8 PRESIDING COMMISSIONER ANGELE: In other
9 words, we accept that as being true.

10 INMATE NGO: Yes, it is.

11 PRESIDING COMMISSIONER ANGELE: Okay. Any
12 confidential material to be used today,
13 Commissioner Rodriguez?

14 DEPUTY COMMISSIONER RODRIGUEZ: There will
15 be none used today, Sir.

16 PRESIDING COMMISSIONER ANGELE: I have
17 passed the hearing checklist marked exhibit one
18 both to your attorney and the District Attorney to
19 ensure that we're all operating off the same set
20 of documents. Mr. Laird, do you have those
21 documents?

22 DEPUTY DISTRICT ATTORNEY LAIRD: Yes, Sir.

23 PRESIDING COMMISSIONER ANGELE: Okay, do you
24 have those documents, Ms. Fox?

25 ATTORNEY FOX: Yes, I do.

26 PRESIDING COMMISSIONER ANGELE: Thank you.

27 ATTORNEY FOX: You're welcome.

1 **PRESIDING COMMISSIONER ANGELE:** Any
2 additional documents to submit?

3 **ATTORNEY FOX:** I don't believe so. However,
4 if we can't find certain things in the Central
5 file then I would like to present what we do have.
6 But I'm assuming that we're going to find them
7 all. I do have two photographs, however, of
8 Mr. Ngo's family.

9 **PRESIDING COMMISSIONER ANGELE:** Will the
10 inmate be speaking with us today?

11 **ATTORNEY FOX:** Yes, he will.

12 **PRESIDING COMMISSIONER ANGELE:** Mr. Ngo, if
13 you'd please raise your right hand to be sworn.
14 Do you solemnly swear or affirm that the testimony
15 you give at today's hearing will be the truth, the
16 whole truth, and nothing but the truth?

17 **INMATE NGO:** Yes, I do.

18 **PRESIDING COMMISSIONER ANGELE:** If there is
19 no objection, Ms. Fox, I'm going to read into the
20 record the Statement of Facts taking it from the
21 probation officer's report, page three, line 15 to
22 page four, line six.

23 **ATTORNEY FOX:** I usually object to the use
24 of the probation officer's report because it is
25 based on hearsay to the extent that there are
26 statements attributed to my client in that, I
27 think they could be admitted for prior

10

1 inconsistent or consistent statements.

2 PRESIDING COMMISSIONER ANGELE: You said you
3 usually do or you are?

4 ATTORNEY FOX: No, I will.

5 PRESIDING COMMISSIONER ANGELE: And what
6 would you like us to use?

7 ATTORNEY FOX: Either the trial transcript
8 or the findings of any court of appeals that would
9 be based on the sworn testimony presented in
10 trial.

11 PRESIDING COMMISSIONER ANGELE: Okay, well I
12 have neither.

13 ATTORNEY FOX: Well, that's not our fault.

14 PRESIDING COMMISSIONER ANGELE: Not our
15 fault neither, so I'll overrule that objection
16 also.

17 ATTORNEY FOX: Then the risk we run is that
18 we're going to have a Statement of Facts that's
19 based on uncorroborated hearsay, which in many
20 cases is just based on the police report, which is
21 not from testimony of percipient witnesses. And
22 also from the District Attorney's office many
23 times the probation office uses their file to come
24 to their statements. Perhaps you can read the
25 Statement of Facts and then ask Mr. Ngo if he has
26 any comments, but I do have a standing hearsay
27 objection for non-corroborated statements.

83

11

1 DEPUTY DISTRICT ATTORNEY LAIRD: Mr. Angele,
2 if I may ---

3 PRESIDING COMMISSIONER ANGELE: Yes.

4 DEPUTY DISTRICT ATTORNEY LAIRD: Is it
5 possible, I do note that this went to trial, the
6 jury had found the defendant guilty of murder in
7 the first degree. However, in exchange for a plea
8 agreement whereby the defendant would admit second
9 degree murder, he got that deal in exchange for
10 getting a 15 to life sentence with a one-year
11 vicarious arm enhancement for a total of 16 years
12 to life. And he agreed to suspend any, or not to
13 seek any appeal of the matter and that's why there
14 would be no court of appeal record on this case in
15 that he agreed to extinguish all appellate rights
16 (inaudible).

17 PRESIDING COMMISSIONER ANGELE: Well, once
18 again, I'm going to overrule your objection and
19 we'll go ahead and incorporate by reference, or
20 excuse me incorporate by reading into the record
21 the probation officer's report, page three, line
22 15, page four, line six. September 18th, 1992, 15
23 year old Angel Gonzales was beaten and stabbed to
24 death at a Fullerton High School as she was
25 walking home after school. As a result of a
26 police investigation, it was learned that earlier
27 in the day the victim, a member of the Fullerton

12

1 Tokerstown, that's T-O-K-E-R-S-town, a Latin gang,
2 and members of the Asian gang, Fullerton Boyz,
3 B-O-Y-Z, were at a McDonald's restaurant near the
4 high school. The victim and the name of No
5 Muhamed, that's N-O, first name, Muhamed,
6 M-U-H-A-M-E-D, had a confrontation with each
7 claiming their respective gang affiliations. .
8 After this non-physical altercation, the group of
9 Asians, which at the time included the defendant,
10 and for the sake of the interpreter, defendant is
11 synonymous with Mr. Ngo, obtained a firearm. And
12 defendant and his co-defendants then returned to
13 the school where they waited for Angel Gonzales.
14 As he was walking home he was attacked and beaten.
15 During the physical altercation, the victim was
16 shot one time in the middle of the back by one of
17 the defendants who was later identified as Usumang
18 Muhamed, first name U-S-U-M-A-N-G, last name,
19 M-U-H-A-M-E-D. The group of five defendants fled
20 the area after the shooting. Angel Gonzales died
21 at the scene as a result of a gunshot wound. The
22 defendant, along with Jimmy Dao, D-A-O, and Asat
23 Cham, first name A-S-A-T, last name C-H-A-M, fled
24 to the state of Washington. They were
25 subsequently arrested there and the murder weapon,
26 a stolen 22-caliber handgun was recovered in the
27 vehicle. Another statement that I want to add to

85

13

1 this was that the vehicle used the day of the
2 shooting apparently was burned prior to them
3 leaving the state. Is that what happened,
4 Mr. Ngo?

5 INMATE NGO: Yes, it was.

6 PRESIDING COMMISSIONER ANGELE: Are there
7 any changes in this story that I just read that
8 you want to bring up?

9 INMATE NGO: No, Sir.

10 PRESIDING COMMISSIONER ANGELE: So this is
11 exactly what happened?

12 INMATE NGO: Basically, yes.

13 PRESIDING COMMISSIONER ANGELE: Basically.

14 INMATE NGO: Yes.

15 PRESIDING COMMISSIONER ANGELE: Okay. You
16 were involved in beating this individual, correct?

17 INMATE NGO: Yes, we got in a fight,
18 fistfight.

19 PRESIDING COMMISSIONER ANGELE: Well, it was
20 more than a fistfight, he was jumped by a gang of
21 people, right?

22 INMATE NGO: Yes, he was.

23 PRESIDING COMMISSIONER ANGELE: Okay. Now
24 if I'm not mistaken you were the one that handed
25 this gentleman the gun?

26 INMATE NGO: No, that's ---

27 PRESIDING COMMISSIONER ANGELE: Is that

86

14

1 true?

2 INMATE NGO: No, that's not true.

3 PRESIDING COMMISSIONER ANGELE: You didn't
4 find it on the floor under the seat of the
5 vehicle?

6 INMATE NGO: In my statement in court was I
7 saw under the car seat.

8 PRESIDING COMMISSIONER ANGELE: Okay.

9 INMATE NGO: And after that it was, my crime
10 partner had it on him without my knowledge.

11 PRESIDING COMMISSIONER ANGELE: So you
12 didn't touch the gun at all?

13 INMATE NGO: No, I didn't, Sir.

14 PRESIDING COMMISSIONER ANGELE: Okay. How
15 many of them, were there four of you or five?

16 INMATE NGO: Five.

17 PRESIDING COMMISSIONER ANGELE: And did you
18 know Mr. Gonzales at all?

19 INMATE NGO: No, Sir.

20 PRESIDING COMMISSIONER ANGELE: But you had
21 left and were living in Los Angeles County at the
22 time?

23 INMATE NGO: Yes, I was, Sir.

24 PRESIDING COMMISSIONER ANGELE: And had
25 become a part of a different gang.

26 INMATE NGO: It wasn't --- I just known
27 them, associated with them.

87

15

1 PRESIDING COMMISSIONER ANGELE: The Tiger
2 Mafia?

3 INMATE NGO: Yes.

4 PRESIDING COMMISSIONER ANGELE: Did you
5 belong to them or did you just associate?

6 INMATE NGO: Associate.

7 PRESIDING COMMISSIONER ANGELE: Okay, but
8 you were a member of the Fullerton Boyz, right?

9 INMATE NGO: Yes, I was.

10 PRESIDING COMMISSIONER ANGELE: Did these
11 gangs know each other?

12 INMATE NGO: No.

13 PRESIDING COMMISSIONER ANGELE: You were 19
14 years old at the time?

15 INMATE NGO: Yes, Sir.

16 PRESIDING COMMISSIONER ANGELE: How do you
17 feel about what happened?

18 INMATE NGO: I'm sorry.

19 PRESIDING COMMISSIONER ANGELE: All right,
20 as far as I can see you had no criminal record
21 prior to this. You had some arrests as an adult,
22 but nothing as a juvenile. You had an intact
23 family?

24 INMATE NGO: Pardon me?

25 PRESIDING COMMISSIONER ANGELE: You had an
26 intact family.

27 INMATE NGO: Yes, I did, Sir.

88

16

1 PRESIDING COMMISSIONER ANGELE: You just got
2 --- I mean after you had left there, I guess they
3 called you up and said we got something we got to
4 take care of.

5 INMATE NGO: No. Actually what happened
6 that day was, you know, we came there, they called
7 me up, you know, I came down to visit them. I
8 said I'm just glad that you called me, you know,
9 it wasn't nothing planned or nothing. It just
10 happened.

11 PRESIDING COMMISSIONER ANGELE: Any reason
12 why you guys kept the gun?

13 INMATE NGO: The gun wasn't even in the car
14 when I first was there when they picked me up; it
15 was never there. The first time I saw it was
16 after I got back into the car.

17 PRESIDING COMMISSIONER ANGELE: I
18 understand. I'm talking about in Washington. The
19 murder gun was found in the car?

20 INMATE NGO: Yes, we kept it. We never
21 disposed of it.

22 PRESIDING COMMISSIONER ANGELE: I'll go over
23 your criminal activity. You had nothing as a
24 juvenile. As an adult you were arrested in 1992,
25 March, San Gabriel Police Department, possession
26 of rock cocaine. What was that about?

27 INMATE NGO: I experimented with cocaine,

89

17

1 rock cocaine.

2 PRESIDING COMMISSIONER ANGELE: You were
3 experimenting with it?

4 INMATE NGO: Yes.

5 PRESIDING COMMISSIONER ANGELE: Were you
6 dealing it at all?

7 INMATE NGO: No.

8 PRESIDING COMMISSIONER ANGELE: Did you
9 experiment with it?

10 INMATE NGO: Yes.

11 PRESIDING COMMISSIONER ANGELE: And?

12 INMATE NGO: I got busted the first time I
13 bought it. I was just driving home at that point
14 and police pulled me over and he searched the
15 vehicle and found --- I gave him permission to
16 search the vehicle, he found the rock cocaine.
17 They gave me diversion for it.

18 PRESIDING COMMISSIONER ANGELE: How long
19 after you bought it did they stop you?

20 INMATE NGO: About what, 15 minutes. I was
21 just going home by then.

22 PRESIDING COMMISSIONER ANGELE: Was it a
23 sting do you know?

24 INMATE NGO: I don't know.

25 PRESIDING COMMISSIONER ANGELE: Do you know
26 what that means?

27 INMATE NGO: Yeah, yes I do. It was not a

18

1 sting. The cop just saw me and he pulled me over.

2 PRESIDING COMMISSIONER ANGELE: Pulled you
3 over for what?

4 INMATE NGO: I don't know.

5 PRESIDING COMMISSIONER ANGELE: Okay, he
6 never indicated to you that he saw you make the
7 purchase?

8 INMATE NGO: No.

9 PRESIDING COMMISSIONER ANGELE: Had you
10 tried it before?

11 INMATE NGO: Yes.

12 PRESIDING COMMISSIONER ANGELE: It does
13 indicate that you were diverted, but you were also
14 arrested apparently in Olympia, Washington,
15 possession of stolen property. But apparently
16 they dismissed it and I think they probably
17 dismissed it because of the arrest and the murder,
18 correct?

19 INMATE NGO: I think so.

20 PRESIDING COMMISSIONER ANGELE: Okay. What
21 was the stolen property?

22 INMATE NGO: From what my understanding is
23 the gun that the murder weapon came from was
24 (inaudible) Washington.

25 PRESIDING COMMISSIONER ANGELE: Okay.

26 INMATE NGO: So I was never even in
27 Washington until after the fact.

91

19

1 PRESIDING COMMISSIONER ANGELE: Which one of
2 your crime partners was from Washington?

3 INMATE NGO: Asat Cham.

4 ATTORNEY FOX: Do you want to spell that? I
5 think for the ---

6 INMATE NGO: A-S-A-T, C-H-A-M.

7 PRESIDING COMMISSIONER ANGELE: I think we
8 already went through that one time. Now, okay, it
9 would indicate --- I want to make sure I have the
10 record straight on the names also. Were there two
11 Muhameds there?

12 INMATE NGO: Yes.

13 PRESIDING COMMISSIONER ANGELE: Okay,
14 because I had two spellings of each name. It
15 would probably be pretty reasonable to assume that
16 Cham, Mr. Cham ---

17 INMATE NGO: Yes.

18 PRESIDING COMMISSIONER ANGELE: Probably
19 brought the gun from Washington when he came down
20 here. Just assuming since it was taken from
21 Washington State.

22 INMATE NGO: Yes, Sir.

23 PRESIDING COMMISSIONER ANGELE: And that's
24 where you wound up going back. You were born in
25 Vietnam on May the 18th, 1973. You (inaudible)
26 the United States since 1979, graduated Fullerton
27 High School. And it says here you attended

92

20

1 Fullerton Community College and Pasadena City
2 College. You completed 10 units and your major
3 was Business. You worked as a telemarketer.
4 Who'd you work for as a telemarketer?

5 INMATE NGO: It's for like a real estate
6 place, (inaudible) insurance, telemarketing. Try
7 to get them to go to seminar.

8 PRESIDING COMMISSIONER ANGELE: You worked
9 at your family liquor store and was living with
10 your parents when this occurred?

11 INMATE NGO: Yes, Sir.

12 PRESIDING COMMISSIONER ANGELE: I want to
13 make sure I get honest answers from you because
14 I've seen two places now that indicates that you
15 were a member of the Tiger Mafia.

16 INMATE NGO: Tiger Mafia is who I associated
17 with. That's when they asked me (inaudible) my
18 tattoo was on there, TM. I was on bulletin
19 boards.

20 PRESIDING COMMISSIONER ANGELE: I
21 understand.

22 INMATE NGO: They ask me TM, that's why I
23 say Tiger Mafia, because you know, I was
24 associated with them.

25 PRESIDING COMMISSIONER ANGELE: But you left
26 Fullerton.

27 INMATE NGO: Yes.

21

1 PRESIDING COMMISSIONER ANGELE: And you
2 moved to Los Angeles area.

3 INMATE NGO: Yes.

4 PRESIDING COMMISSIONER ANGELE: And became
5 affiliated one way or the other with the Tiger
6 Mafia.

7 INMATE NGO: When I moved to Orange County,
8 that's when ---

9 PRESIDING COMMISSIONER ANGELE: Orange
10 County, I'm sorry.

11 INMATE NGO: Associated with Fullerton Boyz.
12 In LA I was with the Tiger Mafia.

13 PRESIDING COMMISSIONER ANGELE: Were you in
14 LA before you went to Orange County?

15 INMATE NGO: Yes, Sir.

16 PRESIDING COMMISSIONER ANGELE: Okay. Now
17 you said you were associated with them. You were
18 associated with them enough to have a tattoo on
19 your arm.

20 INMATE NGO: It's not --- I can have ---
21 it's taken off already.

22 PRESIDING COMMISSIONER ANGELE: Well, it was
23 taken off, it was on at the time. It still said
24 TM.

25 INMATE NGO: Yes.

26 PRESIDING COMMISSIONER ANGELE: Which would
27 indicate to me that you were a member. I mean,

94

22

1 let's be honest, were you or weren't you?

2 INMATE NGO: To tell you the truth, Sir ---

3 PRESIDING COMMISSIONER ANGELE: Yeah, that's
4 what I want to hear, the truth.

5 INMATE NGO: It's just a made up name,
6 bottom line. I was Fullerton Boyz, I didn't want
7 to admit that I was in a gang when I was arrested
8 and they just saw the TM, it's my ex-girlfriend's
9 name, Teresa May, so --- it was just a made up
10 name so, I just tried to throw them off.

11 PRESIDING COMMISSIONER ANGELE: Well, we're
12 looking for honesty and the reason I kept on
13 pushing you is I never heard of Tiger Mafia.
14 Truthfulness is important to us, understand that.

15 INMATE NGO: Yes, Sir.

16 PRESIDING COMMISSIONER ANGELE: But you took
17 her initials off your arm?

18 INMATE NGO: No, I mean --- I tried to put
19 it on myself as (inaudible), it never came out
20 anyway, it faded.

21 PRESIDING COMMISSIONER ANGELE: You've never
22 been married.

23 INMATE NGO: No.

24 PRESIDING COMMISSIONER ANGELE: And you've
25 got no children, correct? Never been in the
26 military. You indicate you only tried cocaine
27 once.

95

23

1 INMATE NGO: Yes.

2 PRESIDING COMMISSIONER ANGELE: Okay. Have
3 you experimented with any other drugs?

4 INMATE NGO: No.

5 PRESIDING COMMISSIONER ANGELE: Alcohol?

6 INMATE NGO: I'm allergic to alcohol.

7 PRESIDING COMMISSIONER ANGELE: That's
8 probably good. Tried nothing else, marijuana,
9 nothing?

10 INMATE NGO: I don't like drugs, not no
11 more. (Inaudible) --- never mind.

12 PRESIDING COMMISSIONER ANGELE: No, tell me.

13 INMATE NGO: I mean you can test me everyday
14 and I'll be clean.

15 PRESIDING COMMISSIONER ANGELE: I believe
16 you. You haven't given me a reason not to. Okay,
17 we do have some letters that we received on your
18 behalf. I'd like to try to go over some of these.
19 We received these at a late hour, but I think
20 (inaudible) because I think it's very important.
21 One letter is from, you've got to help me with the
22 names again, okay.

23 INMATE NGO: Yes, Sir.

24 PRESIDING COMMISSIONER ANGELE: This is from
25 your sister, Tran?

26 INMATE NGO: Which one?

27 PRESIDING COMMISSIONER ANGELE: Tran Ngo.

90

24

1 INMATE NGO: Tan.

2 PRESIDING COMMISSIONER ANGELE: Tan Ngo.

3 She indicated that the family will support you any
4 way they can, that her husband has a job for you
5 in his store.

6 INMATE NGO: Yeah.

7 PRESIDING COMMISSIONER ANGELE: And that
8 your mother has a job for you in her store. Then
9 we have one from a Donald Rubridc, R-U-B-R-I-D-C,
10 Orange County Public Defender, explains the case
11 where you were tried and is in support of your
12 release also. Fong Ngo is your mother?

13 INMATE NGO: Fong (inaudible).

14 PRESIDING COMMISSIONER ANGELE: Okay. She
15 offers support in any way possible. And then we
16 have Calvin Ung, U-N-G, your uncle.

17 INMATE NGO: Yes.

18 PRESIDING COMMISSIONER ANGELE: Who has a
19 job for you in his restaurant.

20 INMATE NGO: Yes.

21 ATTORNEY FOX: Have you gone over the letter
22 from his mother, I'm sorry.

23 PRESIDING COMMISSIONER ANGELE: Uh-hmm,
24 yeah.

25 ATTORNEY FOX: Okay.

26 PRESIDING COMMISSIONER ANGELE: Yeah.

27 INMATE NGO: I have one from my brother,

97

25

1 too.

2 PRESIDING COMMISSIONER ANGELE: That's
3 Calvin?

4 INMATE NGO: That's my uncle.

5 PRESIDING COMMISSIONER ANGELE: Your uncle,
6 okay. I'm sorry Calvin is the one who has a
7 restaurant job for you.

8 INMATE NGO: Yes, Sir.

9 PRESIDING COMMISSIONER ANGELE: I don't have
10 --- I've got your mother.

11 ATTORNEY FOX: We may have a copy.

12 PRESIDING COMMISSIONER ANGELE: Your sister.
13 I'm sorry, is it Raymond? Raymond?

14 INMATE NGO: Raymond Seto's my new
15 brother-in-law.

16 PRESIDING COMMISSIONER ANGELE: Is that the
17 one you're talking about?

18 INMATE NGO: No, my older brother.

19 PRESIDING COMMISSIONER ANGELE: Okay, I do
20 have one here from Raymond Seto, S-E-T-O, he's
21 your brother-in-law. He's known you since 1992.

22 ATTORNEY FOX: There are two separate
23 letters from Calvin Ung. One bears the date of
24 January 30th, 2001. A more recent one is dated
25 April 6th of 2002. I believe that's the one that
26 was referred to, the later of the two.

27 PRESIDING COMMISSIONER ANGELE: I have the

98

26

1 2002 letter here. I don't have it here. Who is
2 Chi Phong Ngo, your older brother?

3 INMATE NGO: Chi Phong Ngo.

4 PRESIDING COMMISSIONER ANGELE: Chi?

5 INMATE NGO: C-H-I, Phong Ngo.

6 PRESIDING COMMISSIONER ANGELE: This says
7 Sieu.

8 INMATE NGO: That's me.

9 PRESIDING COMMISSIONER ANGELE: Okay, I'm
10 sorry. He's your older brother. I've got it.
11 Okay. First name is Chi, C-H-I. Middle name
12 Phong, P-H-O-N-G. Last name, N-G-O. Writing in
13 support of my brother. He's offering a job at a
14 convenience store which is in Anaheim.

15 INMATE NGO: Yes, Sir.

16 PRESIDING COMMISSIONER ANGELE: They all
17 believe in you and are willing to support you.
18 There's another letter from Duc Phong Ngo. D-U-C
19 is the first name. Middle, P-H-O-N-G. Last name
20 N-G-O. Younger brother, writing a letter of
21 support. I'll help my brother financially and in
22 any way that he needs. Like to see you get a
23 second chance, make a difference in society with
24 all the training you've had while in prison. I'll
25 go back to the letter from Raymond Seto. It's a
26 letter of support asking that you be given a
27 second chance. Talks about your mother and her

99

27

1 work at the liquor store. How he believes you
2 have the ability to become a law-abiding citizen.
3 And this is a letter in support of release. Have
4 we covered them all now? There's another one?

5 INMATE NGO: No, just one from my older
6 sister?

7 ATTORNEY FOX: Which I'm passing over.

8 PRESIDING COMMISSIONER ANGELE: This is from
9 Lan Lau.

10 INMATE NGO: Lan.

11 PRESIDING COMMISSIONER ANGELE: First name
12 is Lan, L-A-N. Last name is Lau, L-A-U, who is
13 inmate's sister. She believes that the inmate
14 deserves a second chance to prove himself in the
15 community. They offer you housing, financial
16 support. These include a place to stay, food,
17 clothing, and education. They reside in Alhambra
18 in Los Angeles County, okay. Anything else?

19 INMATE NGO: That should be it.

20 ATTORNEY FOX: Thank you.

21 PRESIDING COMMISSIONER ANGELE: All right,
22 we sent out what we call 3042 notices. Those are
23 notices that go to agencies that have a direct
24 interest in your case. I have received a reply
25 from the District Attorney's office, from the
26 County of Orange. However, there's a
27 representative here today from that office so .

100

28

1 we'll have him make a statement when that time
2 comes. And we'll go to post-conviction factors
3 please, Commissioner Rodriguez.

4 DEPUTY COMMISSIONER RODRIGUEZ: How do you
5 pronounce your name again?

6 INMATE NGO: Just say "no."

7 DEPUTY COMMISSIONER RODRIGUEZ: No?

8 INMATE NGO: Yeah, it's easiest.

9 DEPUTY COMMISSIONER RODRIGUEZ: All right,
10 inmate Ngo, the purpose of, during the first
11 portion of this reading I'll be addressing what
12 you've done since you've been received in the
13 Department of Corrections, which will then bring
14 us to the present. This will establish a base for
15 future Board appearances should you not receive a
16 date today. If there's anything that I leave out
17 during the portion of this reading, either you or
18 your attorney can address it when I'm done, all
19 right?

20 INMATE NGO: Yes, Sir.

21 DEPUTY COMMISSIONER RODRIGUEZ: All right.
22 You were received in the Department of Corrections
23 on February 1st, 1994, at RJ Donovan Reception
24 Center. From there you transferred on March 17th,
25 1994, to Centinella State Prison. From there you
26 transferred on May 16th, 1995, to Calipatria State
27 Prison, excuse me, California State Prison,

101

29

1 Lancaster, and that was a non-adverse transfer.
2 And then you subsequently transferred here to
3 California (sic) Training Facility in Soledad,
4 also a non-adverse transfer on December 16th,
5 1998. Your current classification score is zero.
6 You're currently housed as a Level II inmate on a
7 life override. Your custody is Medium A. You're
8 still in culinary warehouse?

9 INMATE NGO: Yes, Sir.

10 DEPUTY COMMISSIONER RODRIGUEZ: And I note
11 that you have exceptional to excellent work
12 reports. You did complete your high school. You
13 have completed vocation auto upholstery and that
14 was on April 3rd, 1997. What is, is vocation
15 automotive refinishing a separate course?

16 INMATE NGO: Yes, that's a separate course.
17 That's auto paint.

18 DEPUTY COMMISSIONER RODRIGUEZ: Okay, and
19 you did complete that one and that was in
20 September 1997. So you've completed two
21 vocations.

22 INMATE NGO: Yes, Sir.

23 DEPUTY COMMISSIONER RODRIGUEZ: You've been
24 an active participant in the NA program as
25 evidenced by your most recent chronos. You've
26 also completed the Key to Fatherhood, December of
27 2000. You completed a course in the Cause,

102

30

1 Prevention, and Treatment of both Tuberculosis and
2 Hepatitis and that was December 1999. And also
3 you've participated in a Muslim group course,
4 Salesmanship II. And what do you do in that?

5 INMATE NGO: On the Muslim fatherhood and
6 salesmanship, you learn how to be a parent if
7 someday by circumstance to have my kids and stuff.
8 You learn to take care of your own kids and I'll
9 be a good, how a father should be.

10 DEPUTY COMMISSIONER RODRIGUEZ: Have you
11 gone to any anger management courses?

12 INMATE NGO: I try. The only one try to
13 enroll right now, try to get into is Impact.

14 DEPUTY COMMISSIONER RODRIGUEZ: Yeah, the
15 impact program, which is an excellent program
16 here. Captain Gara runs that program.

17 INMATE NGO: Captain Gara's running it.

18 DEPUTY COMMISSIONER RODRIGUEZ: Exactly.

19 INMATE NGO: And it's been very difficult to
20 get in.

21 DEPUTY COMMISSIONER RODRIGUEZ: But you've
22 been here for a long, going on ---

23 INMATE NGO: I have tried since last year,
24 sir.

25 DEPUTY COMMISSIONER RODRIGUEZ: Almost five
26 years, four years actually.

27 INMATE NGO: Yeah.

103

31

1 DEPUTY COMMISSIONER RODRIGUEZ: Yeah.

2 INMATE NGO: They just start this program
3 recently.

4 DEPUTY COMMISSIONER RODRIGUEZ: It's a very
5 good program. I strongly urge you to try to get
6 in and at least keep your name active on that.

7 INMATE NGO: I will.

8 DEPUTY COMMISSIONER RODRIGUEZ: Do you study
9 your 12-steps?

10 INMATE NGO: Not all of them because I have
11 to say I'm a Buddhist and some steps I can't
12 really apply to it. There's only four step, maybe
13 step four, step eight.

14 DEPUTY COMMISSIONER RODRIGUEZ: What is step
15 number eight to you?

16 INMATE NGO: Making a list of all persons
17 harmed.

18 DEPUTY COMMISSIONER RODRIGUEZ: Who would be
19 at the top of that list?

20 INMATE NGO: All of the families, victim
21 family and my family.

22 DEPUTY COMMISSIONER RODRIGUEZ: Now you
23 stated, I believe somewhere we read in the reports
24 that you furnished the gun. You say you didn't?

25 INMATE NGO: No (inaudible).

26 ATTORNEY FOX: Could you tell us where you
27 saw that because I'd like to correct it as well.

104